

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

Advance Ruling No. KAR ADRG 57/2019

Dated: 19th September, 2019

Present:

1. Sri. Harish Dharnia,
Addl. 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 GDC Dimension Data Pvt. Ltd., Sy.No.32/1, 35, 37-47, Milestone Buildcon Pvt Ltd, Off Thanisandra Main Road, Chokkanahalli Village, Yelahanka, Bangalore 560064
2.	GSTIN or User ID	29AAGCG6253J1Z8
3.	Date of filing of Form GST ARA-01	02.07.2018
4.	Represented by	Ms. Rebecca Pinto, Advocate
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangaluru-North.
6.	Jurisdictional Authority - State	LGSTO-150A
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 & Rs.5,000/- under KGST Act 2017 vide CIN RBIS18062900183245 dated 21.06.2018

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

1. M/s GDC Dimesion Data Pvt. Ltd., (called as the 'Applicant' hereinafter), Sy.No.32/1, 35, 37-47, Milestone Buildcon Pvt Ltd, Off Thanisandra Main Road, Chokkanahalli Village, Yelahanka, Bangalore 560064, having GSTIN number 29AAGCG6253J1Z8, 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.5,000-00 each under the CGST Act and the KGST Act.



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

What is the correct Service Accounting Code (SAC) for the services mentioned below in terms of Notification No.11/ 2017 – Central Tax (Rate) dated 28th June 2017?

- a. IT Support Services
- b. IT Managed Services

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

- a. The applicant states that he is a 100% subsidiary of Dimension Data Asia Pacific Pte Ltd (herein after called “DDAPPL”) based in Singapore. The ultimate parent company is NTT, a company incorporated and listed in Japan.
- b. The Company has been set up in Milestone Buildcon IT SEZ in Bangalore falling under the jurisdiction of Cochin SEZ with their letter of Approval dated 07.07.2017.
- c. The applicant is engaged in providing IT Technical and Support Services and IT Managed Services to its group entities located outside India. The Company has commenced its operations on 15.12.2017.
- d. The services provided by the company to the entities situated outside India qualifies as ‘zero-rated supply’ under section 16 of the IGST Act, 2017.
- e. The details of the services for which the advance ruling is sought is as follows:
 - i. **Support Services:** This is sub-classified into two types of services as per the requirements of the customers, namely:
 - 1. Uptime Support Services: This is a collection of four standard service plans. The nature of this support services varies as per the requirements of the customer (i.e technology vendor) and their products. Each service plan is as follows:
 - a. Remote Support: Support of software products for which incidents will be handled remotely.
 - b. Part-only support: provides delivery of parts to site from a set of service target options.
 - c. On-Site support: provides a complete on-site solution for either hardware or software assets
 - d. Mission Critical Support: elevated level of support by senior technical resources when the business is effected by downtime, saving critical time when any incidents occur.
 - 2. Pro-active Support Services: These services assists the customers in management of their estates in a more pro-active and efficient way, without relinquishing any control.

The same comprises of services namely Asset Tracking & Analytics Support Services, Proactive Problem Support Services, IT Service Integration, etc.

ii. **Managed Services:** This consists of the following services, namely:

1. Managed Service for Data Centres: includes the management of the physical servers, converged infrastructure, operating system and virtualization hypervisors. The servers may be hosted on premise, in the cloud, or in a hybrid data centre model.
2. Managed services for Storage: This service provides a reliable and scalable storage infrastructure which enhances information availability and data performance.
3. Managed Services for Enterprise Networks: Thus provides a solution with deliverables in the form of capacity management, incident management, etc.
4. Managed Services for unified communication for CISCO: This service ensures that the unified communications (UC) system continuously operates at an optimal state and is problem free and productive.
5. Managed Network Services: This portfolio supports the customer's networking technologies, which includes the monitoring and troubleshooting of local area networks (LANs) and wide area network (WAN) technologies and WAN services.

4. The applicant states that as per his understanding, the above mentioned services needs to be classified as per the Scheme of Classification of Services provided as Annexure to the Notification No.11/2017- Central Tax (Rate) dated 28th June 2017 as amended from time to time. He also has further referred to the explanatory notes to the schemes of classification of services. Based on the above, the applicant has tabulated key categories under which the services may be classified as follows:

Chapter/ Section/ Heading/ Group	Service Code (Tariff)	Description of Services	Rate of tax
Heading 9983		Other Professional, technical and business services	
Group 99831		Management consulting and management services; information technology services	
	998311	Management consulting and management services including financial, strategic, human resources, marketing, operations and supply chain management	18%

	998313	Information technology consulting and support services	18%
	998314	Information technology (IT) design and development services	18%
	998315	Hosting and information technology (IT) infrastructure provisioning services	18%
	998316	Information technology infrastructure and network management services	18%
Heading 9987	998713	Maintenance and repair services of computers and peripheral equipment	18%

The applicant states that it is evident from the above list of classifications that the rate of tax applicable to his services is constant and accordingly, there is no rate or duty benefit available to his services. Further, considering that the applicant is an SEZ unit engaged on exports under LUT, supply of services is considered as zero-rated under GST legislation. He also states that registered persons having an annual turnover exceeding Rs.5 Crores would be required to mention upto four digits of HSN classification on their tax invoice as per Notification No. 12/2017-Central Tax and 5/2017 – integrated tax dated 28th June 2017.

5. Considering the multiple classifications available under GST, the applicant desires to understand whether the classification made by the applicant is in accordance with interpretation under GST Legislation. He also submits that services provided by the applicant, viz. support services and managed services are information technology service which should be classified under SAC 998313 and SAC 998316 respectively and he puts forward his contentions in support of his view and the same are as under:

- (a) Specific Entry should prevail over general entry: Technical services are more specifically covered under Entry at Sl.No.21 of the Notification. Hence both his services should be classified under the said entry. He also quotes the relevant extract of the “Rules for the interpretation of the First Schedule of the Customs Tariff Act, 1975” for ease of reference:

“....

1. When by application of rule 2(b) or for any reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.”

....”

The entry at Sl. No.21 of the Notification is a general entry referring to "other professional, technical and business services". Further, it should be noted under the said entry, specific tariff codes have been prescribed for information technology related services which are not covered elsewhere.

The applicant states that it is a well-established principle in taxation jurisprudence for resolving classification disputes that a specific entry shall prevail over a general entry. In this regard, the applicant places reliance on the judgements of the Hon'ble Supreme Court of India in the case of **Western India Plywoods Ltd. V. Collector of Customs, Cochin [2005 (188) ELT 365 (SC)]** and in the case of **Superintendent of Central Excise and Others v. Vac Met Corporation Ltd. [1985 (22) ELT 330 (SC)]**.

- (b) In relation to Support Services: The applicant states that as per the description of services relating to support services stated earlier, it is evident that the services rendered by the applicant viz. Support Services relates to the provision of information technology software services. The Notification under paragraph 4 defines Information Technology Software as under:

"4. Explanation. – For the purposes of this notification, -

- (v) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment."

The activities undertaken by the applicant under the category of "Support Services" includes the repair and support of hardware as well as the software products. The Company also assigns a dedicated technical expert to perform the support services on the customer's technology.

Therefore, the applicant states that the provision of the said services is fairly covered within the ambit of "information technology consulting and support services" classified under SAC 998313 under specific entry no. 303 of the Notification and based on Explanatory notes to Classification of services provided for SAC 998313.

- (c) In relation to the Managed Services, the applicant submits that the managed services undertaken by the applicant is in relation to the network servers and the storage facilities provided to enable the operational management of network system. It is customized under different service plans depending upon the customer's product and its requirement. Therefore, the provision of the said services is fairly covered within the ambit of "information technology infrastructure and network management services" classified under the specific Service Code (Tariff) 998316 based on the notification and the Explanatory Notes to Classification of services provided for SAC 998316.

Given the above, the applicant wishes to classify the services under the below mentioned SAC depending on the nature of services provided by the applicant:



Description of Service	SAC
Support Services	998313 (Information Technology Consulting and Support Services)
Managed Services	998316 (Information Technology Infrastructure and Network Management Services)

6. FINDINGS & DISCUSSION:

We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Ms Rebecca, Advocate, authorized representative, during personal hearing. We have 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.

6.1 The description of services which are provided by the applicant have been examined with reference to the details provided by the applicant. The classification tariff entries 998313 and 998316 have also been verified and the following points are noted:

(a) The Service Accounting Code 9983 is considered first. Section 8 deals with the Business and Production Services and there is no dispute that the services provided by the applicant fall under this category. The services provided are not covered under Heading 9981 (relating to Research and Development Services) or 9982 (relating to Legal and Accounting Services). Hence it gets covered under the Heading 9983 which is related to Other Professional, technical and business services and there is no dispute in this matter.

(b) The matter before the Authority is there are two types of services provided by the applicant, one is of support services and the other is infrastructure and network management services and the applicant desires to know the correct classification. The Groups falling under Heading 9983 are perused and the following is noted:

- a. Group 99831 deals with Management Consulting and Management Services; Information Technology Services
- b. Group 99832 deals with Architectural Services, Urban and Land Planning and Landscape Architectural Services
- c. Group 99833 deals with Engineering Services
- d. Group 99834 deals with Scientific and other technical services
- e. Group 99835 deals with Veterinary Services
- f. Group 99836 deals with Advertising services and provision of Advertising Space or time
- g. Group 99837 deals with Marketing and Public Opinion Polling Services

- h. Group 99838 deals with Photography and Videography and their processing services
- i. Group 99839 deals with Other professional, technical and business services.

Undoubtedly, the services rendered by the applicant do not fall under Groups 99832, 99835, 99836, 99837, and 99838. Hence the entries that need to be examined are 99831, 99833, 99834 and 99839. The other entries which may need examination are 998598, 998729.

6.2 The Support services provided by the applicant have been examined and it is seen that the support services include the support of software products and also hardware products. Some of the plans include support of the entire infrastructure (especially Pro-active support services). Hence it is common contract for maintenance of hardware and software and hence is directly related to the Group related to "information technology services" and hence is covered under the Group 99831.

Coming to the issue whether the support services fall under Service Code (Tariff) 998313 or 998316 or 998319, it is seen that applicant is providing support of both hardware and software and the issue boils down to whether they are covered under Information Technology Consulting and Support Services (Service Code 998313) or Information Technology Infrastructure and Network Management Services (Service Code 998316). Reliance placed by the applicant on the definition of "information technology software" is of no relevance to the present issue.

6.3 Service Code 998313 includes

- i. Providing advice of expert opinion on technical matters related to the use of information technology, such as advice on matters such as hardware and software requirements and procurement, systems integration, systems security, provision of expert testimony on IT related issues; (not applicable)
- ii. providing technical expertise to solve problems for the client in using software, hardware or an entire computer system, such as provision of customer support in using or troubleshooting the software, upgrade services and the provision of patches and updates, provision of customer support in using or troubleshooting the computer hardware, including testing and cleaning on a routine basis and repair of IT equipment, technical assistance in moving a client's computer system to a new location, provision of customer's support in using or troubleshooting the computer hardware and software in combination;
- iii. providing technical expertise to solve specialized problems for the client in using a computer system, such as auditing or assessing computer operations without providing advice or other follow-up action including auditing, assessing and documenting a server, network or process for components, capabilities, performance, or security;

- iv. data recovery services, i.e. retrieving a client's data from a damaged or unstable hard drive or other storage medium or providing standby computer equipment and duplicate software in a separate location to enable a client to relocate regular staff to resume and maintain routine computerized operations in event of a disaster such as fire or flood;
- v. other IT technical support services not elsewhere covered.

6.4 The operations of the applicant are analysed with reference to the above and found that the support services mentioned above are all related to such services which are not directly involved in the provision of the service or supply of goods by the recipient, and hence only assists the recipient of services by providing advice, trouble shooting of hardware and software, to recover the damaged portion and the like. The applicant is also providing a package of maintenance of the hardware and software of the recipient and they are not involved in the actual production of the products of the recipient. This would mean that the applicant is providing support services which are technical in nature and hence such support operations of the applicant squarely falls under the Service Code 998313.

6.5 The Managed Services provided by the applicant have also been examined and found that they are related to the management of Data Centres, Storage infrastructures, Networks and Communication infrastructures and hence are directly related to the Group related to "information technology services" and hence is covered under the Group 99831.

6.6 The Service Code 998316 is analysed and found that this service code includes:

- i. managing and monitoring a client's IT infrastructure including hardware, software and networks;
- ii. managing and monitoring communication networks and connected hardware to diagnose networking problems and gather capacity and usage statistics for the administration and fine-tuning of network traffic.

These services also remotely manage security systems or provide security related services provision of day-to-day management and operation of a client's computer system.


6.7 The managed services offered by the applicant is verified and found that they are involved in the management of IT infrastructure including networks and hence these services squarely fall under the Service Code 998316.

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

RULING

As per the terms of Notification No. 11/ 2017 – Central Tax (Rate) dated 28th June 2017 -

1. The IT Support services provided by the applicant are covered under the Service Code 998313.
2. The IT Managed services provided by the applicant are covered under the Service Code 998316


19/09/2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member



Place: Bengaluru,
Date: 19.09.2019

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, Bangalore-North, Bengaluru.
4. The Asst. Commissioner, LGSTO-150A, Bengaluru.
5. Office Folder.