

**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 63/ 2019

Date : 20-9-2019

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. Aquarelle India Private Limited, 1/1 and 51/1, Kalababu Village, JiganiHobli, Anekal taluk, Bangaluru Urban - 560 105
2	GSTIN or Used ID	29AAGCA1203Q2ZI
3	Date of filing of Form GST ARA-01	19-07-2018
4	Represented by	Sri Rohitkumar Singh, Chartered Accountant
5	Jurisdictional Authority-Centre	The Commissioner of Central Tax, Bangalore South Commissionerate, (Range -ASD 8)
6	Jurisdictional Authority-State	LGSTO-090,Bengaluru
7	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged CGST: Rs.5,000/- vide CIN ICIC180072900267434 dated 19.07.2018 and KGST: Rs.5,000/- CIN: ICIC18072900109647 dated 13-07-2018

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

M/s. Aquarelle India Private Limited, (hereinafter called "applicant") having GSTIN number 29AAGCA1203Q2ZI have filed an application on 19-07-2018 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 CGST Act & KGST Act.

2. The applicant is registered dealer having registered office at No.570, New No.22, 32nd D Cross, 11th Main, Jayanagar 4th Block, Bengaluru, (Bangalore) Urban Karnataka, 560011 and same is used as its corporate office. Various support departments such as Sales, Marketing, IT, Finance etc., operate from aforesaid Aquarelle India



office. The applicant had taken the said premise on lease with effect from 01.07.2011 till 30.06.2022 with a lock in period of first three years. The applicant wishes to vacate the said premises in the near future and intend to hand over the possession of the premises to the owner along with fixtures to the building.

3. The applicant submitted that these fixtures cannot be dismantled on vacating the premises and these fastened assets would be handed over to the building owner in "as is where is" condition without any consideration charged for the assets handed over. They provided the list of assets which would be left over during handing over of the possession in an annexure to the application. The applicant states that these assets were capitalized in the books of accounts before the introduction of Goods and Services Tax Act i.e., 1st July 2017 and no credit of CENVAT or VAT was availed in the earlier regimes.

4. In view of the above applicant has sought advance ruling in respect of the following questions:

1. Whether disposing off assets (no CENVAT/VAT Credit was taken) fastened to the building on delivering possession to the lesser, on which no consideration will be received, shall fall within the ambit of "Supply" as per Section 7 of Central Goods and Services Tax Act, 2017 and shall be chargeable with GST, as per provisions of Central Goods and Services Tax, 2017 (alternatively "CGST"), the Karnataka Goods and Services Tax, 2017 (alternatively "KGST") and Integrated Goods and Services Tax, 2017 (alternatively "IGST") and rules contained therein?
2. If the answer to above question is in **affirmative**, should the value appearing in the books as on the date of disposal may be construed as the "open market value" on which GST is to be discharged as per Rule 27 of the CGST rules 2017?

5. The authorized representative Sri. Rohith Kumar Singh, Chartered Accountant appeared for personal hearing proceedings and submitted written arguments inter alia stating as under:

- 5.1 The registered office of the applicant is situated at No.570, New No.22, 32nd D Cross, 11th Main, Jayanagar 4th Block, Bengaluru - 560011 and the same is used as its corporate office. They operate various support departments such as Sales, marketing, IT, Finance etc. from the aforesaid office. The said premise is taken on lease from 01.07.2011 to 30.06.2022 with a lock in period of first three years.
- 5.2 The applicant now wishes to vacate the aforesaid premises in near future. The possession of the premises will be handed over to the owner along with fixtures to the building which cannot be dismantled on vacating the premises. The company wishes to vacate the building with the fastened

assets and hand over to the building owner in "as is where is" condition without any consideration charged for the assets.

5.3 The applicant states that these assets were capitalized in the books of account before the introduction of Goods and Services Tax Act i.e., 1st July 2017 and no credit of CENVAT or VAT was availed in the earlier regime.

6. The applicant, with regard to the first question states that for considering the aforesaid transaction within the ambit of supply as per para 4(a) of Schedule II of the CGST Act, 2017, it is necessary to satisfy below mentioned conditions:

- any of the goods forming part of the business assets;
- are transferred or disposed of so as no longer to form part of business assets;
- whether or not for a consideration;
- by or under the directions of the person carrying on the business

Therefore, in the opinion of the applicant the said assets were put to use in the pre-GST regime without availment of CENVAT/VAT credit, the disposal of such assets in the GST regime should not amount to supply and hence not liable to GST.

The applicant further submitted that treating such transactions as "Supply" considering the essence of the provisions stated in Schedule II of CGST Act 2017 might lead to double taxation, which goes against the very spirit of the GST Law.

7. Further the applicant, with regard to second question, submitted that in case the aforesaid transaction is treated as supply, it is important to ascertain the value on which GST is to be discharged.

7.1 In line with the Rule 27 of the CGST Rules 2017 the value of such capital goods shall be the open market value and the Rule 27 narrated as under.

- a) be the open market value
- b) If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply.
- c) If the value of the supply is not determinable under clause(a) or clause(b), be the value of supply of goods or services or both like kind and quality;
- d) If the value is not determinable under clause (a) or clause(c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of Rule 30 or Rule 31 in that order.

8. FINDINGS AND DISCUSSION

8.1 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by Sri. Rohith Kumar Singh, Chartered Accountant and authorised representative of the applicant company, during the personal hearing. We also considered the issue involved on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

8.2 It is an admitted fact that the applicant had taken the building on rent or lease during the earlier regime for business purposes and has invested in the furnishing of the building to suit his requirements. They capitalised the assets as "Office Equipment, furniture and fittings" in their books of accounts. The applicant stated that they have not claimed any input tax credit under the earlier laws on the assets involved. The applicant is disposing off these assets so that they no longer would be a part of their assets and the same is for nil consideration.

8.3 Section 7(1) of the Central Goods and Services Tax Act reads as under:

"7. Scope of supply.-

(1) 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, license, 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; and*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration."*

The above sub-section clearly states that the activities specified in Schedule I agreed to be made without a consideration are also covered under "Supply".

8.4 Schedule I to the Central Goods and Services Act, 2017 states as under:

"ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION"

- 1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets."*

The same is examined and observed that in the instant case there is a permanent transfer of business assets and admittedly they are capitalised before the advent of the GST Act and no input tax credit is claimed under the earlier law. Further, there is no claim of input tax credit, under the present GST Law.

Hence, the transaction is not covered under the entry no.1 of the Schedule I to the Central Goods and Services Tax Act and hence not covered under the clause (c) of sub-section (1) of section 7.

8.5 The entry 4(a) of Schedule II to the Central Goods and Services Act, 2017 which is related to the “activities or transactions to be treated as supply of goods or supply of services” is examined, which reads as under

“4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;”

It is an admitted fact that the assets sought to be transferred are capitalised under the head “Office equipment, furniture and fittings” and forms the part of the assets of the business entity, i.e. applicant and these assets are sought to be transferred or disposed of by the applicant and they undoubtedly no longer form part of those assets, then such transfer or disposal would be a supply of goods by the applicant and it is immaterial whether the said transfer/disposal is for a consideration or not.

Hence they would be treated as supply of goods as per entry no. 4(a) of Schedule II to the CGST Act.

8.6 However, the sub-section (1A) to section 7 to the Central Goods and Services Tax Act 2017, which is inserted w.e.f. 01.02.2019, states as under:

“(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”

That means Schedule II only differentiates a supply either as a supply of goods or a supply of services in case of an activity which has constituted a supply in accordance with the provisions of sub-section (1) of section 7. Hence entries of Schedule II can be invoked under sub-section (1A) of section 7, only if an activity is qualified as a supply under sub-section (1) of the section 7. It is pertinent to note that this line of application is only applicable to the transactions which have happened after the amendment and is not applicable to the transactions which have concluded before the effective date of amendment to the CGST Act. Earlier to the amendment, since the scope of supply also included those under Schedule II, the transaction of the applicant if concluded before the effective date of amendment would constitute a supply under the CGST Act and hence is liable to tax at the appropriate rates applicable to the goods in question.

But if the transaction is taking place after the effective date of amendment to the CGST Act, i.e. 01.02.2019, then it is pertinent to verify whether the transaction is covered under the scope of supply under Clause (a) of sub-section (1) of section 7 of the CGST Act.

8.7 All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business are covered under the scope of supply as per Clause (a) of section 7(1) of the CGST Act. Admittedly there is a transfer of assets in the course or furtherance of business. The applicant states that this transaction would not be for any consideration. The term "consideration" is defined in clause (31) of section 2 of the CGST Act and it reads 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;"

Here, the applicant states that there is no payment in the form of money or otherwise by the applicant to the landlord and hence this sub-clause would not apply to the transaction. However, if the clause (b) is considered, the "consideration" in relation to a supply of goods or services or both would include the monetary value of any act or forbearance by the applicant in response to the supply of goods or services. Evidently, the writing off of the value of assets in the balance sheet by the applicant is an act related to the transfer of property in assets and this monetary value of that act would form the consideration in relation to the supply.

8.8 In view of the above reasons, the transaction of transfer of ownership of business assets in the course or furtherance of business for a consideration (being the monetary value in relation to the transfer of such assets) would constitute a supply in accordance with the provisions of clause (a) of Section 7(1) of the CGST Act and the same would be the supply of goods in accordance with the entry no. 4(a) of the Schedule II to the CGST Act.

9. Regarding the second question relating to the value of the transaction, section 15 of the CGST Act is verified and the same reads as under:

"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)

(3)

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed."

Since there is no price actually paid or payable for the said supply of goods, section 15(4) of the CGST Act would become applicable for determining the value of this supply.

10. The value of the supply is prescribed in rule 27 of the CGST Rules, 2017 which is related to the determination of the value of supply of goods or services where the consideration is not wholly in money.

10.1 Rule 27 of the CGST Rules, 2017 reads as under:

"27. Value of supply of goods or services where the consideration is not wholly in money. – Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -

- (a) be the open market value of such supply;
- (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order."

10.2 Rule 30 of the CGST Rules 2017 reads as under:

"30. Value of supply of goods or services or both based on cost.- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services."

10.3 Rule 31 of the CGST Rules, 2017 reads as under:

"31. Residual method for determination of value of supply of goods or services or both.- Where the value of supply of goods or services or both



cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and the provisions of this Chapter."

10.4 In view of the above provisions of CGST Rules, 2017, it is clearly evident that the value of the supply is to be determined by the following (in the same order)

- (a) open market value of such supply,
 - (b) value of supply of goods of like kind and quality;
 - (c) 110% of the book value of such goods in the books of accounts,
- and if none of the above is possible, it needs to be determined as per the rule 31.

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

R U L I N G

1. The transfer of assets fastened to the building on delivering possession to the lessor free shall amount to supply within the meaning of "supply" within the section 7 of the Central Goods and Services Tax Act, 2017 and is chargeable to tax under the GST Acts.

2. The value of such supply of goods would be

- (a) open market value of such supply,
- (b) value of supply of goods of like kind and quality;
- (c) 110% of the book value of such goods in the books of accounts,

and if none of the above is possible, it needs to be determined as per the rule 31.




20.09.2019

(Harish Dharnia)
Member

Place : Bengaluru,
Date : 20-09-2019

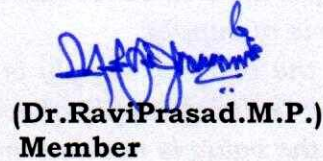
To,

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 South Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-090, Bengaluru.
5. Office Folder

Aquarelle India


(Dr. Ravi Prasad M.P.)
Member