

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

Advance Ruling No. KAR ADRG 70/ 2019

Dated: 23rd September, 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. Spring Nature Customer Service Centre GmbH, Tiergartenstrasse 15-17, 69121, Heidelberg, Germany 7 TH Floor, Vijaya Building, 17 Barakhamba Road, New Delhi
2.	GSTIN or User ID	9917DEU29001OS7
3.	Date of filing of Form GST ARA-01	09.10.2018
4.	Represented by	Shashi Mathews, Advocate
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bengaluru West Commissionerate, OIDAR Services Division
6.	Jurisdictional Authority - State	--N A--
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000/- under CGST Act vide CIN ICIC18109900000004 dated 08.10.2018 2. Rs.5,000/- under KGST Act vide CIN ICIC180999000000089 dated 21.09.2018

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

1. M/s Springer Nature Customer Service Centre GmbH, (called as the 'Applicant' hereinafter), having GSTIN number 9917DEU29001OS7, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 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 provider of OIDAR services 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 applicant is required to charge GST on supply of OIDAR services to “only” unregistered persons in India in view of compulsory or mandatory registration and return filing requirement as per section 24(xi) of CGST Act, Rule 64 of CGST Rules and GST Flyer issued by Directorate General of Taxpayer Services, CBIC?
- b) If response to the above is ‘No’, whether the applicant is required to charge GST on supply of OIDAR services to Government, Local Authority, Governmental Authority and an individual irrespective of their GST registration status?
- c) Whether the purpose for which OIDAR services are to be used by a recipient in India shall also determine whether GST has to be charged by the applicant or not irrespective of the category of recipient? In other words, if any service recipient is using applicant’s OIDAR services for commerce, industry or any other business or profession in India, the applicant will not be required to charge GST.
- d) If response to C above is in affirmative, how should applicant determine that its OIDAR services shall be used by the recipient for any purpose other than commerce, industry or any other business or profession, located in India? As the majority of content in books, journals, etc. supplied by the applicant is used / capable of use by way of reference by professional end-users, i.e. scientists, doctors, engineers, researchers, academicians, etc. can it be taken to imply that applicant’s OIDAR services are used by recipients in India for purposes of commerce, industry, business or profession?
- e) In case the response to C above is in affirmative, whether purpose is required to be determined in case of Government, local authority, Governmental authority and an individual?
- f) Whether it is adequate for the applicant to obtain written confirmation from recipient of its OIDAR services in order to:
 - a. Determine their respective category in terms of section 2(16) of IGST Act, i.e. whether the customer is covered in the category of Government, Local Authority, Governmental Authority, etc.
 - b. Accept recipient’s claim to exemption under GST Law, eg. exemption allowed to eligible educational institutions from GST

on procurement of electronic journals/ periodicals in terms of
Notification No.2/2018- Central Tax (Rate)/

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant is a part of Springer Nature Group (SNG or the Group). The Group is a leading publisher of scientific, technical and medical content (the content or Group's / SNG's content). The applicant is one of the two sales services entities within SNG. It enters into sales contracts with customers. Furthermore, it performs (or arranges for) sales and marketing, customer service, warehousing and deliveries of books and journals to customers. The Sales Service entities invoice the customers and, after deduction of a commission fee, subsequently transfer the revenue to the Publisher entities within SNG.
 - b. The Group's content is made available to customers in form of books and journals – printed and electronic. Such books and journals are also available through online platforms owned by the Group. The supply of electronic books and journals including allowing access of Group's content electronically by the applicant to customers in India and its taxability in the hands of applicant under applicable provisions of GST is being discussed in this application.
 - c. The main purchasers of the Group's books and journals sold by the applicant are libraries, corporations, medical organisations and research institutions across the world and also a large number of individuals. The ultimate end-user of applicant's books and journals inter-alia are scientists, researchers, academicians, professionals and students. Scientific documents are available in several disciplines including the following:
 - a. Biomedicine
 - b. Business and management
 - c. Chemistry
 - d. Computer Science
 - e. Earth Sciences
 - f. Economics
 - g. Law, etc.
 - d. The categories of customers for applicant's products in India includes:
 - a. State / Central Government departments
 - b. State / Central Governmental Universities / Educational Institutions
eg. National Law School, IIT, IIM etc.



- c. Not for Profit Organisations including Government or Private Hospitals/ educational institutions and colleges
 - d. Corporate Customers including Pharmaceutical Companies
 - e. Individual Customers, being researchers or professionals like doctors, etc.
4. Regarding the legal provisions applicable to their case, the applicant states as under:

4.1 Section 14(1) of the IGST Act, 2017 provides that

“On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services”

4.2 Section 2(17) of the IGST Act defines “Online Information and Database Access or Retrieval Service (OIDAR)” as follows:

“ “Online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, -

- (i) advertising on the internet
- (ii) providing cloud services
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage;
- (vii) online gaming;”

4.3 The term “non-taxable online recipient” (NTOR) is defined under Section 2(16) of the IGST Act as under:

“(16) “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry, or any other business or profession, located in taxable territory.”

4.4 Section 24(xi) of the CGST Act, 2017 provides for mandatory registration under GST for every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.

4.5 The applicant states that, in summary, the above mentioned provisions states that in case of supply of OIDAR services by a person located in a non-taxable territory (i.e. the applicant in the present case) to a non-taxable online recipient, the overseas supplier of OIDAR services is liable to register compulsorily and is required to pay GST. Further, a person providing OIDAR services from a place outside India is required to file returns only when services are supplied to a person other than a registered person (i.e. an unregistered person) as per Rule 64 of the CGST Rules, 2017.

4.6 The applicant is providing e-books / journals through internet to various categories of customers including State/ Central Government, State/ Central Governmental Authorities, individual consultants, and not for profit organisations including educational institutions, hospitals, etc. The applicant wants to confirm its understanding for its liability to do GST Compliance on such supplies in various scenarios.

5. Regarding the facts that have bearing on the question raised, the applicant made the following submission:

- a. The applicant states that they are in the business of supplying scientific content comprising contemporary and historical research from scholars in various disciplines of science, technology, medicine, social sciences and humanities. Such content is supplied by means of books, journals, reference works, protocols and databases. Supply of this content through electronic means to customers in India is the subject matter of this application.
- b. Given the nature of content provided by the applicant, the categories of customers in India includes:

State/Central Government Departments



- ii. State/Central Government Universities;
 - iii. Not for Profit Organisations, including Government or Private Hospitals/ educational institutes and colleges'
 - iv. Individual Customers, being researchers or professionals like doctors etc.;
 - v. Corporate Customers including pharma companies.
- c. Since the requirement to pay GST and undertake applicable compliance under Section 14 of IGST Act is fastened on the applicant only in case of supply to NTOR, it becomes relevant to determine as to when the aforesaid recipient of OIDAR services would qualify to be NTOR and the applicant would be required to undertake GST compliance.

6. The applicant argues that –

- (a) The supply of online books and journals by the applicant gets covered under the definition of OIDAR services as per Section 2(17) of the IGST Act, 2017.
- (b) The applicant is required to pay GST on the supply of OIDAR services only in case the customer qualifies as a Non-taxable Online Recipient (NTOR).
- (c) The applicant is required to obtain registration only if it supplies OIDAR services to customers not -registered under the GST Law in India
- (d) The applicant is required to file GST Return only if it supplies OIDAR services to customers not-registered under GST Law in India.
- (e) The purpose for which the services are used in India is immaterial for the above provisions.

7. Regarding the definition of Non-taxable Online recipient, the applicant states that the definition prescribes the following conditions for any person to qualify as NTOR:

- (a) The recipient is a government, local authority, governmental authority, individual or any person who is not registered
- (b) The above person must be using OIDAR services in relation to any purpose other than commerce, industry, or any other business or profession, located in taxable territory.

7.1 Further, as per section 24(xi) of CGST Act and Rule 64 of CGST Rules, the overseas supplier of OIDAR services is required to obtain registration and file GST returns only in case the recipient of such supply is a person

not registered under GST. (Actually it is only for compulsory registration and not for regular registration)

7.2 The applicant states that from the combined reading of GST provisions, any registered person under GST (whether such person is government, local authority, governmental authority, individual or any other person) would not qualify to be NTOR and the applicant would not be required to charge GST and therefore undertake other applicable GST compliances. OIDAR services rendered by the applicant to any registered person under GST would be subject to reverse charge mechanism instead. In case if Government, Local Authority, Governmental Authority, individual or any other person is not a registered person under GST, but receiving such services for commerce, industry or any other business or profession, the GST liability is NOT on the supplier of services, i.e. the applicant.

7.3 The premise of the aforesaid interpretation is that 'not registered' under the definition of NTOR is applicable to all categories mentioned in the definition. However, on reading the definition of NTOR, the use of the phrase ' . . .any other person not registered . . . ' may be meant to cover "unregistered persons" who are other than government, local authority, governmental authority and an individual. Such an interpretation would put burden of compliance on a non-resident supplier even when the recipient is a registered person which does not seem to the intention of the law.

7.4 In addition to the condition of registration under GST, the applicant understands that the definition of NTOR also prescribes for one more condition for customer to qualify as NTOR. The second condition being that the person should be receiving the OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory, meaning thereby that the applicant is not required to charge GST on the supply of OIDAR services even to an unregistered customer, if such unregistered customer would be using OIDAR services for the purpose of its business, profession, commerce or industry.

7.5 Determination of liability to charge GST based upon end-user test of one's products by the customer is onerous for any businessman and especially for an overseas service provider. The activities of Governments and Local authorities are also specifically included in the term "business", and so are commerce, profession and industry. Hence the applicant states that only personal consumption is excluded from the term business.



7.6 The applicant states that they are depending on the certificates from the customers at present to determine whether they are used for the purposes other than business. The applicant states further that in view of the scientific nature of majority of the content in the books, journals, etc. supplied electronically by the applicant, it is implicit that such electronic content is not for the purpose of casual reading or for pleasure. The scholarly content in scientific, technical and medical disciplines sold by the applicant is technical in nature and is used by research and educational institutes, by professionals and corporates for furtherance of their technical knowledge. Therefore, in almost all supplies by the applicant, the use could be assumed for either business or industry or profession or commerce.

8. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. Shashi Mathews, Advocate, during the personal hearing. We 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.

8.1 The transaction of the applicant is examined and found that the applicant is supplying OIDAR services to customers in India. It is not disputed that the supplies are OIDAR services.

8.2 Regarding the definition of “non-taxable online recipient” as defined in Section 2(16) of the IGST Act, 2017, it is very clear that to qualify as a “non-taxable online recipient” the person must –

- (a) be any government, local authority, governmental authority, an individual or any other person not registered, and
- (b) be located in the taxable territory, must receive OIDAR services in relation to any purpose other than commerce, industry or any other business or profession.

Hence it is clear that a government, local authority, governmental authority, an individual or any other person, who is not registered, if satisfies the second condition are covered under the definition of “non-taxable online recipient”.

8.3 In respect of registration Section 24(xi) of the CGST Act, 2017

makes it very clear that a person supplying OIDAR services from a place outside India to a person in India, other than a registered person, shall register compulsorily irrespective of the turnover of such supplies. It is only related to registration of the supplier. As far as the liability is concerned, reference should be made to section 14 of the IGST Act, 2017 which reads as under:

“Section 14: Special provision for payment of tax by a supplier of online information and database access or retrieval services.

- (1) On supply of online information and database access, or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services

Provided “

8.4 This makes it abundantly clear that the charge of tax on the supply of OIDAR services to a non-taxable online recipient would be on the service provider. In case of supply of any service by a person located in a non-taxable territory to any person other than non-taxable online recipient, the liability to pay tax rests on the person located in the taxable territory under reverse charge basis under Notification No.10/2017-Central Tax (Rate) dated 28.06.2017 and such person is liable for registration compulsorily under Section 24(iii) of the CGST Act, 2017.

8.5 The burden of proving that the a unregistered person located in the taxable territory has received OIDAR services for the purposes other than for business, commerce, industry or profession lies on the applicant.

9. In view of the foregoing, we rule as follows

R U L I N G

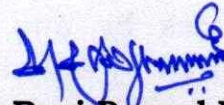
- A. The applicant has to charge GST on the supplies of OIDAR services made to unregistered persons in taxable territory for the purposes other than commerce, industry, business or profession.
- B. The applicant is not required to charge GST on the OIDAR services made to Government, Local Authority, Governmental Authority and an individual, if they are registered persons.
- C. The applicant is not required to charge GST on the OIDAR supplies made to a person in the taxable territory who receives the same for the purpose of commerce, industry or any other business or profession.



- D. This question is not applicable as the answer to C is not affirmative.
- E. This question is not applicable as the answer to C is not affirmative.
- F. The burden of proving that the OIDAR services received by an unregistered person were for purposes other than commerce, industry or any other business or profession lies with the applicant.


23.09.2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,
Date: 23.09.2019

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 Pr. Commissioner of Central Tax, Bangalore-West Commissionerate, Banshankari, BMTC Building, Bengaluru.
4. Office Folder.