

T. NO-114/2023-24

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

Advance Ruling No. KAR ADRG 44-1/2022

Date : 02-02-2024

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes . . . Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect Taxes . . . Member (Central)

1.	Name and address of the applicant	M/s. KBL SPML JV, C/o Workafella, 150,1, Infantry Road, Opp. Commissioner Office, Shivajinagar, Bengaluru - 560 001.
2.	GSTIN or User ID	29AAKFK4967C1Z0
3.	Date of filing of Form GST ARA-01	17-09-2022
4.	Represented by	Sri. K J Kamath, Advocate & Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bengaluru North Commissionerate, Bengaluru. (Range-BND4)
6.	Jurisdictional Authority - State	ACCT, LGSTO-130, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	This ruling is being issued on order of remand dated 12.04.2023 by the Hon'ble High Court of Karnataka, in Writ Petition No.1119/2023.

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

M/s. KBL SPML Joint Venture (herein after referred to as 'Applicant'), C/o Workafella, 150,1, Infantry Road, Opp. Commissioner Office, Shivajinagar, Bengaluru - 560 001 had filed an application for advance ruling during 2022 with regard to the alleged pure services of Operation & Maintenance (O&M) of pumping stations and reservoirs at T K Halli, Harohalli and Tataguni supplied to M/s BWSSB, Bengaluru.



KBL SPML-JV-Remand

2. The applicant had sought advance ruling in respect of the question "Whether the transaction undertaken by the applicant is covered under the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, amended by Notification No.2/2018 dated 25.01.2018 and further Notification No.16/2021 dated 18.11.2021."

3. The applicant had contended that the contractee BWSSB has been classified as Local Authority in their GST registration No.29BLRA06245B1DJ, issued by GST Department and thus entry No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 exempts the supply of pure services to a local authority.

4. The AAR, Karnataka, after following the due principles of natural justice, rejected their application, vide ruling No. KAR ADRG 44/2022 dated 29.11.2022, in terms of Section 98(2) of the CGST Act 2017, basis the said application was **not** in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant, but in relation to a completed supply, provided by them and therefore the said application was beyond the jurisdiction of this Authority & liable for rejection, as specified under Section 95(a) of the CGST Act 2017.

5. The applicant, aggrieved by the said ruling filed the Writ Petition No.1119/2023 before the Hon'ble High Court of Karnataka, Bengaluru, on the grounds that the opportunity to submit their arguments with regard to admissibility of the application was not given. The Writ Petition has been ordered on 12.04.2023 as under:

"The petition is allowed in part, and the respondent's order dated 29.11.2022 [Annexure-A] rejecting the petitioner's application for advance ruling without admitting it for detailed consideration is quashed and the application is restored for reconsideration with due opportunity to the petitioner. The petitioner, who now has the advantage of knowing the reasoning assigned by the respondent, shall be at liberty to file additional plea when issued with notice of further hearing. The petitioner to avail this opportunity shall file a certified copy of this order with the office of the respondent".

6. **Admissibility of the application :**

The advance ruling is sought by the applicant on the question, at para 2 supra, in respect of the issue of **applicability of a notification issued under the provisions of the CGST Act 2017** to the supply concluded prior to filing of the application and thus the maintainability of the said application will be discussed. Further the applicant consequent to orders of the Hon'ble High Court of Karnataka amended the application to modify the question in respect of the future supplies also. The issue of applicability of a notification to future supplies is covered under Section 97(2)(b) and hence the application is admissible under Section 97(2)(b) only for the limited purpose of future supplies.



PERSONAL HEARING PROCEEDINGS HELD ON 13.07.2023 & 07.09.2023

7. The applicant, as per the Hon'ble High Court's order supra, was given an opportunity of hearing on 13.07.2023. and Sri. K J Kamat, Advocate appeared for the said hearing and argued with regard to admissibility of the application that the phrase "***In this Chapter, unless the context otherwise requires***" prefixed to the definitions given under Section 95 of the CGST Act 2017 indicates that the definitions to be read in broader sense; referred GST Flyer on Advance Rulings and requested time to file additional plea to make amendment to the application so as to change the question quoting the reason that the Hon'ble High Court of Karnataka has restored the application. Accordingly, the applicant while furnishing written submissions vide their letter dated 07.08.2023 requested for additional hearing.

An additional opportunity of hearing was given on 07.09.2023 and Ms Veena J Kamat, Advocate appeared for hearing; argued on maintainability of the application and requested to rely on their submissions vide their letter dated 07.08.2023.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant sought advance ruling in respect of the question mentioned at para 2 supra. The applicant was awarded a contract by BWSSB for execution of civil and electromechanical works for pumping stations & reservoirs at T. K. Halli, Harohalli and Tataguni as well as Operation & Maintenance for a period of 7 years. It is an admitted fact that the construction of said pumping stations & reservoirs was completed in the VAT regime and the O&M work was effective from 01.11.2014 and got completed by 31.10.2021. The instant application was filed on 17.09.2022 after completion of O&M work, as the tax amount was withheld by the contractee BWSSB. Hence the maintainability of the instant application need to be examined and we proceed to examine the same, before going into the merits of the case.

11. The applicant, on maintainability of the application, submitted their arguments inter alia stating as under :



11.1 The applicant sought advance ruling on the question related to the **transaction undertaken by the applicant**, ironically admitting that the term “transaction” has not been defined under the CGST Act 2017. The word transaction was used in the earlier order as the question demanded the same. Thus the question on which advance ruling is sought is considered as supply undertaken by the applicant.

11.2 The applicant quoting the GST Flyer stated that this authority has erred in its earlier order/ruling by concluding that advance ruling can be sought in respect of “ongoing transactions”. In fact this authority had reproduced the definition of advance ruling given in flyer and referred “a transaction already being undertaken” as an ongoing transaction, which is clearly evident from para 11 of the earlier order/ruling. The phrase “being undertaken” is quoted from Section 95(a) which defines advance ruling and its scope. Thus this argument of the applicant is factually not correct.

11.3 The applicant contended that this authority has interpreted Section 95(a) of the CGST Act 2017 to hold that advance ruling can be sought only in respect of ongoing transaction while the said section does not state as such. Further the applicant quoting Section 97(2)(d) & (g) argues that the words “paid” and “thing done” used in the said sections indicate that the application, seeking advance ruling, is not restricted for ongoing transactions. In this regard it is observed that Section 97(2)(d) deals with the issue of “admissibility of input tax credit of tax paid or deemed to have been paid”. The admissibility of ITC arises only in respect of tax paid or deemed to have been paid and thus the contentions of the applicant that the word “paid” indicates past tense and thus the advance ruling can be sought for concluded supply is misleading and not acceptable. Further Section 97(2)(g) deals with any particular thing done by the applicant, with respect to any goods or services or both, amounts to or results in a supply of goods or services or both, within the meaning of the term “supply”. Thus this section specifies whether any particular thing done by the applicant amounts to supply or not and therefore the applicant argument is not acceptable and not tenable under the law.

It is pertinent to mention here that “advance ruling” is defined in terms of Section 95(a) of the CGST Act 2017 to mean **“a decision provided by the Advance Ruling Authority to an applicant on matters or on questions specified in Section 97(2) of the CGST Act 2017 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant”**. Thus an advance ruling is

- A decision provided by the Authority
- To an applicant
- On matters or on questions specified in Section 97(2)



- In relation to supply of goods or services or both
- Being undertaken or proposed to be undertaken by the applicant.

It could be inferred from the above definition that it contains five limbs and the last one is the relevant one which specifies that advance ruling can be sought in respect of a supply **being undertaken** or **proposed to be undertaken** by the applicant.

Section 95(a) defines “advance ruling” whereas Section 97(2) deals with only the issues on which advance ruling can be sought for. In the instant case the supply is neither **a supply being undertaken** nor **a supply proposed to be undertaken**, but a concluded supply and therefore the applicant’s argument is not acceptable and thereby not tenable under the law.

11.4 The applicant, quoting Section 98 of the CGST Act 2017, contended that the Act does not contemplate rejection of an application on the ground that the transaction in respect of which clarification is sought by the applicant is a concluded one or an ongoing one. It is pertinent to mention here that Section 98 supra deals with only the procedure to be followed on receipt of application. In fact Section 98(2) read with provisos therein empowers this authority to either admit or reject the application, by order, on giving an opportunity of hearing and specifying the reasons for rejection in the said order.

11.5 The applicant, based their entire arguments/contentions on treating their concluded supply as a transaction whereas the Act does not specify the word transaction. GST flyer used this word “transaction” for ease of understanding. It is also pertinent to mention here that the flyers are not binding on the Department. Further the applicant admitting that the supply is concluded i.e. the work is completed, argues that the works contract has already been executed but the contractee BWSSB have not paid the amount of consideration in full and thereby the transaction is not completed.

The impugned works contract awarded to the applicant indubitably amounts to supply of service. The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of Section 13 of the CGST Act 2017. Further Section 13(2) specifies the time of supply of services and the same is as under:

(2) *The time of supply of services shall be the earliest of the following dates, namely:—*

(a) *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*



(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) the date of receipt of payment shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

In the instant case it is an admitted fact that the contractee has not paid the consideration in full towards the supply of impugned works contract, which implies that the applicant has raised invoice/s for the concluded supply of works contract service. Thus it proves that the impugned supply is a concluded supply, in terms of the CGST Act 2017.

11.6 We observe that Section 95(a) of the CGST Act 2017, while defining the term 'advance ruling', stipulates that an applicant can seek advance ruling on the questions specified under Section 97(2) of the CGST Act 2017, **in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the said applicant.** It is pertinent to mention here that the word "being" is the present participle of the verb "be" and used to form tenses in the progressive (or continuous) aspect. A present participle is a verb form (or verbal) made by adding -ing to the base that often functions as an adjective. Use of present participle denotes present and continuing action. Thus the phrase 'being undertaken' refers to an ongoing and continuous supply.

11.7 In the instant case the question, on which the applicant seeks advance ruling, is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the said applicant, but in relation to a completed supply, provided by them. Therefore the instant application is beyond the jurisdiction of this Authority and hence is liable for rejection.

11.8 The applicant vide para 13 of their letter dated 07.08.2023 submitted that the advance ruling sought for is also required for future transactions and opportunities proposed to enter into; the applicant is engaged in the business of pumping stations and reservoirs and has been undertaking the projects in Karnataka as well as in other states. Therefore the applicant requested to admit



the application for future contracts and issue the advance ruling for future contracts.

11.9 The applicant is seeking advance ruling on the same issue but for future contracts. The original question was “*Whether the transaction undertaken by the applicant is covered under the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, amended by Notification No.2/2018 dated 25.01.2018 and further Notification No.16/2021 dated 18.11.2021.*” In view of this, the question in respect of future contracts would be “**Whether the supply related to the business of pumping stations and reservoirs to be undertaken by the applicant is covered under the notification No.12/2017-Central Tax (Rate) dated 28.06.2017, amended by Notification No.2/2018 dated 25.01.2018 and further Notification No.16/2021 dated 18.11.2021**”. Thus the applicant through the amended application seeks to know through the question that whether the exemption under Notification No.12/2017 is available for future works to be undertaken on similar lines to that of the earlier contract undertaken with BWSSB, Bengaluru, Karnataka.

11.10 The following observations have been made from the applicant’s earlier contract dated 07.04.2010 with BSWWB.

- a) The nature of the works to be designed and executed by the contractor is “**Civil and Electromechanical works for Pumping Stations and Reservoirs** at T.K. Halli, Horahalli and Tataguni and **Operation and Maintenance of the Facilities for a period of Seven Years.**”
- b) The bid accepted by the contractor (applicant) is for the design, execution and completion of such works and remedying of any defects therein and operate and maintain the constructed facility.
- c) The time for completion will be 21 months.

It is evident from the observations supra that the contract covers civil works wherein the supply of goods is also involved and thus such service falls under Works Contract service and hence it can’t be a pure service. Further the applicant vide their letter dated 08.06.2022, addressed to the contractee M/s BWSSB clearly mentioned that “**the O&M services consist of both supplies of labour / manpower and material and hence, the same shall be covered under works contract and cannot be considered in the nature of pure services**”.

11.11 Thus, from the available information, the future contracts that the applicant intends to undertake are in the nature of works contract services for construction of pumping stations and reservoirs. The said services are not covered under any of the entries of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.



11.12 In view of the foregoing, we conclude that the question posed by the applicant is related to supplies undertaken by them, to M/s BWSSB, Bengaluru, prior to the date of filing of the application for advance ruling and thus no ruling can be given on the question. Thus the instant application is not maintainable and liable for rejection under the provisions of the GST Act 2017. Further, as for the question on future supplies is concerned, based on the available information the supply is of works contract services and is not covered under any of the entry in the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

12. In view of the above, we pass the following

RULING

- a) The application filed by the Applicant for advance ruling in respect of the concluded supply is rejected, in terms of Section 98(2) of the CGST Act 2017.
- b) Works contract services for construction of pumping stations and reservoirs to be undertaken by applicant is not covered under exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.



(Dr. M.P. Ravi Prasad)

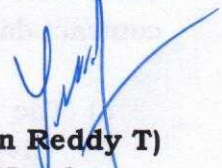
Member

MEMBER

Karnataka Advance Ruling Authority

Place : Bengaluru, Bengaluru - 560 009

Date : 02-02-2024



(Kiran Reddy T)

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 Commissioner of Central Tax, Bengaluru North Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-130, Bengaluru.
5. Office Folder.



KBL-SPML-JV-Remand