

**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 83/2019

Dated: 25th 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 ALCON CONSULTING ENGINEERS (INDIA) PVT. LTD. No.30, 4 th Main, 4 th Stage, Next to Trinity Motors, Industrial Town, Basaveshwaranagar, Bengaluru 560079
2.	GSTIN or User ID	29AAFCA0506P1ZJ
3.	Date of filing of Form GST ARA-01	15.02.2019
4.	Represented by	Sri B.R. Vijayakumar, VP (Finance & Accounts) and DAR
5.	Jurisdictional Authority - Centre	Pr. Commissioner of Central tax, Bangalore West, West Division-3, Range - AWD3
6.	Jurisdictional Authority - State	LGSTO-070A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN CNRB19022900077762 dated 12.02.2019 2. Rs.5,000-00 under KGST Act vide CIN CNRB18082900088433 dated 23.10.2018

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 Alcon Consulting Engineers (India) Pvt. Ltd., (called as the 'Applicant' hereinafter), having GSTIN number 29AAFCA0506P1ZJ, 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 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:

- a) Whether the expenses incurred by the Staff members on behalf of the Company exceeding Rs.5000-00 a day and then reimbursed periodically are liable to tax
- b) Whether RCM is applicable on remuneration paid to the Directors.

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

- a. The applicant states that they are in the business of providing Consultancy services, like surface survey and map making, Project management consultancy services for construction projects, Engineering Advisory services and technical testing analysis services etc. to the General Public, State Government Agencies, and Central Government throughout the country.
- b. The applicant states that while providing the above said services, some of the expenses are incurred by their employees on behalf of the Company, the details of which are as follows:
 - i. Travelling Expenses
 - ii. Reimbursement of Transportation and Food Expenses
 - iii. Vehicle Hire Charges
 - iv. Machinery Hire Charges
 - v. Boarding and Lodging
 - vi. Consumables
 - vii. Printing and Stationery
 - viii. Postal and Courier Charges
 - ix. Mobile and Telephone Charges
 - x. Survey Materials, etc.
- c. Sometimes the above said expenses were incurred by the employees is exceeding Rs.5,000-00 in a day and it is very difficult to monitor the same at regular intervals because their staff members are working at remote areas and there is no connectivity to reach or contact the office on a day to day basis or vice versa.
- d. The applicant also states that he would like to know whether tax under reverse charge mechanism is applicable on the remuneration paid to Directors.

4. 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. B.R. Vijayakumar, VP (Finance & Accounts), during the 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.

4.1 The facts presented by the applicant have been examined and it is found that the applicant's employees incur expenses on behalf of the company in the course of employment and the said amounts are reimbursed by the applicant on periodical basis. These expenses are incurred by the applicant and are only paid by the employee and later on reimbursed to the employee by the applicant. The issue is whether the amount paid as reimbursement of the expenses paid by the employee amounts to a supply liable to tax.

4.2 Services by an employee to the employer in the course of or in relation to his employment are covered under Clause 1 of the Schedule III which relates to the activities or transactions which shall be treated neither as a Supply of Goods nor as a Supply of Services. Hence the services provided by the employees of the applicant to the applicant are not a supply. Further, the expenses incurred by the employees are expenses of the applicant and the consideration is payable by the applicant himself and later on reimbursed by the applicant.

4.3 The term "consideration" in relation to the supply of goods or services or both is defined in clause (31) of Section 2 of the Central Goods and Services Tax Act, 2017 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;”

4.4 The amount paid by the employee to the supplier of service is covered under the term “consideration” as if it is paid by the applicant himself for the services received by them on behalf of the company. This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received as the services of the employee to his employer in the course of his employment is not a supply of goods or supply of services and hence the same is not liable to tax. However, if any tax is applicable, it is on the services received by the employee on behalf of the applicant in the course of his employment, irrespective of the fact that it is paid by the applicant or the employee and later reimbursed by the applicant.

5. Regarding the remuneration to the Directors paid by the applicant, the services provided by the Directors to the Company are not covered under clause (1) of the Schedule III to the Central Goods and Services Tax Act, 2017 as the Director is not the employee of the Company. The consideration paid to the Director is in relation to the services provided by the Director to the Company and the recipient of such service is the Company as per clause (93) of section 2 of the CGST Act and the supplier of such service is the Director.

5.1 The question before us is not whether this service is taxable or not, but whether this supply of services is liable to tax under reverse charge mechanism.

5.2 Notification No.13 / 2017 – Central Tax (Rate) dated 28.06.2017 states that “on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services”. The notification is issued under Section 9(3) of the CGST Act, 2017. Entry 6 of the said Notification reads as under

Sl.No.	Category of Supply of Services	Supplier of Service	Recipient of Service
1	2	3	4
6	Services supplied by a Director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory

In the present case, the applicant is the company and is located in the taxable territory and the Directors' remuneration is paid for the services supplied by the Director to the applicant company and hence the same is liable to tax under reverse charge basis under section 9(3) of the Central Goods and Services Tax Act, 2017.

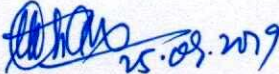
6. The conclusions drawn in reference to the Central Goods and Services Tax Act 2017 are also applicable *mutatis mutandis* to the Karnataka Goods and Services Tax Act and Integrated Goods and Services Tax Act, 2017 also as similar provisions are present in that Act.

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

RULING

1. The amounts paid to the employees of the applicant company as reimbursement of expenses incurred by them in the course of employment of the applicant company are not liable to tax under the provisions of the Goods and Services Tax Act, 2017 as the transaction of the services supplied by a supplier to the employee and paid by the employee is liable to tax after 30.09.2019.
2. The remuneration paid to the Director of the applicant company is liable to tax under reverse charge mechanism under sub-section (3) of section 9 in the hands of the applicant company as it is covered under entry no. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017.




(Harish Dharnia)

Member


(Dr. Ravi Prasad M.P.)

Member

Place: Bengaluru,

Date: 25.09.2019

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Pr. Commissioner of Central Tax, Bangalore-West, Bengaluru.
Asst. Commissioner, LGSTO-070 A, Bengaluru.
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