

**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 75/ 2019

Dated: 24th 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 Informatics Publishing Ltd., No.194, R.V.Road, Basavanagudi, Bengaluru 560004
2.	GSTIN or User ID	29AACCT4896Q1Z8
3.	Date of filing of Form GST ARA-01	21.01.2019
4.	Represented by	Sri K.Dayananda, Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore- South, South Division-1, Range-DSD-1, Bengaluru
6.	Jurisdictional Authority - State	LGSTO-100, 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 CNRB19012900189993 dated 17.01.2019 2. Rs.5,000-00 under KGST Act vide CIN CRB18092900354125 dated 28.09.2018

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

1. M/s Informatics Publishing Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AACCT4896Q1Z8, 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 Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:



Whether the input tax credit is available when the online educational journals and periodicals are supplied to the Educational Institutions other than to pre-school and higher secondary school or equivalent, which is exempt by virtue of Notification No.2/2018 – Central Tax (Rate) dated 25.01.2018?

3. The applicant furnishes some facts relevant to the stated activity:
 - a. The applicant states that they are a company engaged in the supply of online journals. They import various online journals from the foreign suppliers and supply them mainly to the educational institutions. For example, they import the following types of journals:
 - i. The British Journal of Psychiatry
 - ii. The Journal of Laryngology & Otology
 - iii. The American Journal of Clinical Pathology
 - iv. Advances in Physics
 - v. Journal of Modern Optics
 - vi. Education in Chemistry
 - b. The applicant states that as per the provisions of Section 5(4) of the IGST Act, read with section 13(12) of the IGST Act, the applicant is liable to pay IGST on the import value of online journals. As per Section 13(12), in case of online database retrieval and access services, the location of the recipient is the place of supply of service and hence based on section 5(4) of IGST Act, the applicant is liable to pay IGST on the import of services.
 - c. The applicant states that as per the Notification No.2/2018- Central Tax (Rate) dated 25.02.2018, supply of online journals and periodicals to the educational institutions is not liable for GST. Generally, as per Section 17(1), 17(2) read with Rule 42 of the CGST Act, input tax credit attributable to exempt supply is not available.
 - d. As per the applicant, the supply made to the eligible educational institution is not exempt supply for the purpose of section 17(1), 17(2) Rule 42 and hence input tax credit should be available.

4. The applicant states that the online journals or periodicals sold to an educational institution other than pre-school and higher secondary is exempt from the payment of IGST. However, when the online journal is imported and sold to all other educational institutions such as pre-school, higher secondary educational institution, vocational institution and any other person, it is taxable. Therefore, the exemption given in the notification when sold to an educational institution is a conditional exemption.

4.1 As per section 17(1) and 17(2) read with Rule 42, the amount of input tax directly attributable to the supply of exempt supply is not an eligible input tax credit. Exempt supply is defined in section 2(47) as “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be

wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, 2017, and includes non-taxable supply.

4.2 Notification No.2/2018- Central tax (Rate) dated 25.01.2018, has been issued under Section 11 of the Act and as per the notification, the exemption is subject to the condition that the supply of online journal and periodicals to an educational institution other than pre-school and higher secondary educational institution is exempt from GST. It means the exemption is not “wholly” exempt under Section 11. It is a conditional exemption. The conditions attached to the notification are as under:

- (a) The supply should be to an educational institution
- (b) Supply should be only online educational journal or periodicals
- (c) Educational Institution excludes primary and higher secondary educational institutions.

4.3 Due to the above pre-condition, supply of online journals or periodicals only to educational institutions other than higher and primary educational institution is exempt from GST, but is not “wholly” exempt; rather it is a conditional exemption. In the given case, generally, the supply is taxable supply. Only a certain segment of buyers of this service are exempt from payment of tax. Therefore, as per the understanding of the applicant, it is not “wholly” exempt from the levy of GST and a conditional exemption given only to a certain users. Once the exemption under section 11 is “not wholly” exempt but, subject to conditional exemption, provisions of section 17(1), 17(2) read with Rule 42 of the CGST Rules is not applicable and hence as per the understanding of the applicant, the input tax credit thereon is available to the applicant.

4.4 The applicant states that if the input tax credit is not allowed, then the purpose of giving exemption to an educational institution other than pre-school and higher secondary institution is not satisfied. That means, if the supplier has to reverse the credit then cost of purchase of such online subscriptions to the institutions will go up.

4.5 The applicant states that under the erstwhile CENVAT Credit Rules also, if input tax credits were used exclusively in the manufacture of exempted goods or exempted services, credits for such were not allowed. However, if the exemption was a conditional exemption, then there was no requirement to reverse the credit. In this regard, the applicant relies on the following decisions:

- (a) Sobha Developers Ltd. v. Commissioner – 2012 (25) STR 136 (Tri)
- (b) Deloitte Haskins & Sells v. Commissioner – 2015 (38) STR 1220 (Tri)

5. 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. Dagananda, CA, 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.

5.1 The transaction of the applicant is examined and found that the applicant is only providing access to the articles published in various journals and papers to its subscribers. It itself is not publishing any online journal, but only maintaining a database of links to all the journals. It is seen that the links to the articles are maintained in a metadata form and the subscriber, when accesses to the platform, can access the individual articles published in any of the journals available on the platform after reading the catalogue of the article. The articles are catalogued and made available. Some of the articles are available for full view while some are only available in the catalogued form and the subscriber needs to subscribe the individual journal sites to gain access to the full article. The applicant is collecting the subscription fee which is nothing but the fee charged to gain access to the data available in the database and to download the articles or information. This is an online information and database access and retrieval service provided by the applicant to its subscriber and not a sale or supply of online journals.

5.2 In view of the above, the transaction is not covered under sub-item (v) of item (b) of serial no.66 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018- Central Tax (Rate) dated 25.01.2018 which reads as under

“66. Services provided to an educational institution by way of –
(v) supply of online educational journals and periodicals.”

5.3 Instead, the transaction of the applicant is covered under the Heading 9984 Telecommunications, broadcasting and information supply services under the Group 99843 and Service Accounting Code of 998631, the description of which is “online text based information such as online books, newspapers, periodicals,, directories and the like”. The articles are covered under the items “and the like” and hence the SAC applicable for the providing access to the portal is 998431. This service is liable to tax at 9% CGST under the entry no.22 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017.

5.4 For the same reasons, the transaction is liable to tax at 9% under the KGST Act as it is covered by entry no. 22 of Notification (11/2017) No. FD 48 CSL 2017 dated 29.06.2017.

5.5 Since, the transaction is not exempt and tax is liable to be discharged, the input tax credit on the inward supplies of goods are not restricted or made ineligible under section 17 of the CGST Act. Hence the ineligibility

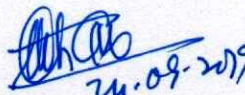
provisions of Section 17(1) and 17(2) are not applicable to the pertinent case of the applicant.

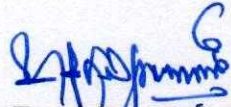
6. In view of the foregoing, we pass the following

R U L I N G

The providing of access to the online content by the applicant to his users is covered under SAC 998431 and is liable to tax at 9% CGST under the entry no.22 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 and at 9% under the KGST Act as it is covered by entry no. 22 of Notification (11/2017) No. FD 48 CSL 2017 dated 29.06.2017. Since the transaction is not exempt, there is no restriction on input tax credit claims as per Section 17(1) or 17(2) of the CGST Act / SGST Act / IGST Act.




24.09.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,
Date: 24.09.2019

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 Assistant Commissioner of Commercial Taxes, LGSTO-100, Bengaluru.
5. Office Folder