

**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 27/ 2019

Date : 12-09-2019

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 Karnataka Co-operative Milk Producers Federation Limited (Formerly known as KMF), KMF Complex, Dr. M H Mari Gowda Road, Bengaluru – 560029
2.	GSTIN or User ID	29AAAAK1110G1Z7
3.	Date of filing of Form GST ARA-01	06-10-2018
4.	Represented by	Sri Lokesh Reddy, C A
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore South Commissionerate, Queen’s Road, Bengaluru – 560001
6.	Jurisdictional Authority – State	LGSTO-40 Bengaluru (Jurisdictional Office)
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under KGST Act and CGST Act vide CIN CNRB18102900027054 dated 05-10-2018.

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

1. M/s Karnataka Co-operative Milk Producers Federation Limited (Formerly known as KMF), (hereinafter called “applicant”), KMF Complex, Dr. M H Mari Gowda Road, Bengaluru – 560029, having GSTIN number 29AAAAK1110G1Z7, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules 2017, and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in



FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a registered society under Co-operative Society Act 1959 in Karnataka and is engaged in processing of milk and milk products wherein its district co-operative unions are shareholders of the organizations, which are registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

“Whether KMF is liable to deduct GST TDS under section 51 of CGST Act on the payments made to suppliers.”

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

- a. The applicant is a registered society under Co-operative Societies Act, 1959 in Karnataka and is engaged in processing of milk and milk products. The district co-operative milk unions are shareholders of the organization and the applicant is registered as a society, limited by shares and all the shares are purchased by district co-operative milk unions. The Government of Karnataka or of any other state or Central Governments does not have any shares or holding with the applicant.
- b. The applicant stated that the board of directors consists of one elected director from each district co-operative society (milk union) and directors nominated by state government. There are 19 directors in the applicant organization, out of which 14 directors are nominated by district milk unions, 4 directors are nominated by state government and 1 director is nominated by National Dairy Development Board.
- c. The applicant is of the presumption that since few of nominated directors are from government, they would be coming under purview of section 51 of Goods and Service Tax Act, 2017 therefore under notified persons and are required to deduct TDS at the rate of 1% CGST and 1% SGST from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract exceeds two lakh and fifty thousand rupees.
- d. The applicant has drawn the attention to the Notification No.33/2017 – Central Tax dated 15-09-2017 and Notification No. 50/2018-Central Tax dated 13-09-2018 and presumes that they may be a government entity.

- e. Further the applicant has also stated that they are not established by the central government or the state government or a local authority under the Societies Registration Act, 1860.

PERSONAL HEARING: / PROCEEDINGS HELD ON 17.11.2018.

4. Sri Lokesh Reddy, Chartered Accountant and duly authorized representative of the applicant appeared for personal hearing proceedings held on 17.11.2018 & reiterated the facts narrated in their application. The applicant wanted to know whether they are a Government Entity and if so, whether they are liable to deduct GST TDS under section 51 of CGST ACT on the payments made to suppliers.

5. FINDINGS & DISCUSSION

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Lokesh, Chartered Accountant and authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant and relevant facts.

5.2 At the outset, we would like to make it clear 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.

5.3 The applicant seeks advance ruling on the question that "*Whether they are liable to deduct GST TDS under section 51 of CGST Act on the payments made to suppliers.*" It is an admitted fact that the applicant is a registered society under Co-operative Societies Act 1959 in Karnataka. Further neither the Government of Karnataka or any local authority in Karnataka nor any other State or Central Government hold any shares in the organization of the applicant.

5.4 In this regard, we proceed to examine provision of CGST Act 2017 which mandate certain notified class of assesses to deduct TDS under GST and to follow the relevant procedures. Section 51 of the CGST Act 2017, read with Notification 50/2018-Central Tax dated 13.09.2018, mandates certain persons to undertake TDS deduction. We draw attention to Sub-section (1) of Section 51 of the CGST Act 2017, which reads as under:



“51. Tax deduction at source. –

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate, –

(a) A department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(hereafter in this section referred to as “the deductor”) to deduct tax at the rate of one per cent from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.”

5.5 Notification No. 33/2017 –Central Tax dated 15-09-2017 specified that the following persons are the persons notified under clause (d) of the Section 51(1) to deduct tax at source :

i. an authority or a board or any other body, –

a. set up by an Act of Parliament or a State Legislature;

or

b. established by any Government,

with fifty-one percent or more participation by way of equity or control, to carry out any function;

ii. society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

iii. public sector undertakings;

This notification was superseded by Notification No. 50/ 2018 – Central Tax dated 13th September, 2018 and in that notification the date of effect of the provisions of section 51 is provided as 1st October, 2018, but has not made any changes in the notified persons as notified under clause (d) of Section 51(1) earlier.

5.6 Subsequently, notification 50/ 2018 – Central Tax dated 13th September, 2018 was amended by Notification No.57/2018- Central Tax dated 23.10.2018 wherein a proviso is inserted and the same reads as under:

“Provided that with respect to persons specified under clause (a) of sub-section (1) of section 51 of the Act, nothing in this notification shall apply to the authorities under the Ministry of Defence, other than the authorities specified in Annexure-A and their offices, with effect from the 1st day of October, 2018.”

5.7 Later the Notification No. 50 /2018 – Central Tax dated 13-09-2018 was amended by inserting another proviso vide Notification No.61/2018 – Central Tax dated 05-11-2018 and the second proviso reads as under:

“Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018”.

5.8 Further, the Notification No.73/2018- Central Tax dated 31.12.2018 amended the Notification No. 50 /2018 – Central Tax dated 13-09-2018, by inserting the third proviso and the same reads as under:

“Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c), and (d) of sub-section (1) of section 51 of the said Act.”

5.9 In view of the above, the issue before us to decide is whether the applicant falls under any of the categories of the persons mandated to undertake TDS deduction, under Section 51(1) of the CGST Act 2017, on consideration of aforesaid relevant amendments.

The applicant entity was formed and registered under Co-operative Society Act 1959, where the District Co-operative Milk Unions are shareholders of the applicant organisation. Further applicant is a taxable person under the GST Acts and the entire shareholding is with the district milk unions and not with the State Government of any State or the Central Government or any local authority. Hence it is not a department or an establishment of Central Government/State Government/local authority. Therefore applicant is not cover under clauses (a) & (b) of Section 51(1) of CGST Act 2017.



5.10 We proceed to examine whether the applicant is covered under clause (d) of Section 51(1) of the Act, as enumerated already at para 5.5 supra.

- a. The applicant has neither been set up by an Act of Parliament nor a State Legislature.
- b. The Applicant has not been established by any Government with fifty-one percent or more participation by way of equity or control, to carry out any function.
- c. The applicant has not been established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- d. The Applicant is not a Public sector undertaking

The applicant is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and the applicant states that they are not registered under Societies Act, 1860. Hence the applicant is not a notified person under clause (d) of section 51(1).


5.11 Now we proceed to examine the only left over clause (c) of the Section 51(1) of the CGST Act 2017 i.e. whether the applicant is covered under “Governmental Agency” or not. “Governmental agency” has not been defined under the CGST Act 2017 or any other notifications. Governmental Agencies are usually administrative units of government that are tasked with specific responsibilities. These agencies can be established by national, regional or local governments. These agencies are entities distinct from government departments or ministries, but they often work closely with and report to one or more departments or ministries. Others operate independently, especially those with oversight or regulatory responsibilities.

5.12 In the instant case the applicant has not been established by national, regional or local governments but is registered under Co-operative Society Act 1959, which mandates certain supervisory / participation from the relevant Department of Karnataka State Government. The applicant has not been tasked with any responsibilities by the Government of Karnataka. The Directors have been nominated only to safeguard the funds of the said society. Therefore the applicant is not covered under clause (c) of Section 51(1) of the CGST Act 2017. In view of the above the applicant is not cover under any of the clauses of the Section 51(1) of the CGST Act 2017 and hence is not liable to get registered to undertake TDS deduction.

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

RULING

The applicant is not liable to deduct tax at source as per provisions of section 51 of CGST ACT towards payments made to suppliers of taxable goods or services or both, as they are not covered under any of the clauses of Section 51(1) of the CGST/KGST Act 2017.


12.09.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place : Bengaluru,

Date : 12-09-2019

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, C.R. Buildings, Queen's Road, Bengaluru - 560 001.
4. The Asst. Commissioner, LGSTO-40, Bengaluru.
5. Office Folder

