

**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 64/2019

Date : 20-9-2019

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	Mr. Rajendran Santhosh D No. 2102, "Komalraj", 2 nd Cross, H.D.Kote Road, Srirampura 3 rd Stage, Mysuru - 570 023
2.	GSTIN or User ID	291800000429ARE
3.	Date of filing of Form GST ARA-01	18.07.2018
4.	Represented by	Ms Roopashi Khatri, Advocate
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Mysore Commissionerate, Mysuru.
6.	Jurisdictional Authority – State	LGSTO-190, Mysuru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CPIN 18072900051200 dated 16.07.2018 (OTC payment in SBI) & Rs.5,000/- under KGST Act vide CIN SBIN18072900196123 dated 17.07.2018.

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

Sri Rajendran Santosh, (called as the 'Applicant' hereinafter), residing at D No. 2102, "Komalraj", 2nd Cross, H.D.Kote Road, Srirampura 3rd Stage, Mysuru 570 023, is employed as an "independent Regional Sales Manager for the Middle East and Indian Markets" by H-J Family of Companies, a company engaged in the business of manufacturing and selling various categories of distribution transformer components and accessories. He has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and KGST Act, 2017 read with Rule

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104 of CGST Rules 2017 & KGST Rules 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 an individual stated to be an employee of an overseas company engaged in business of manufacturing and selling various categories of distribution transformer components and accessories and is not registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following questions:

- a) Whether the services provided by the applicant to M/s H-J Family of Companies amount to or result in a supply of services or both, within the meaning of that term?
- b) If the above question is answered in the affirmative:
 - i. What is the classification of the services rendered by Mr. Santosh to H-J Family of Companies?
 - ii. Is Mr. Santosh required to be registered under the CGST Act, 2017?
 - iii. What is the liability of Mr. Santosh to pay tax on the services rendered by him to H-J Family of Companies?
 - iv. What is the time and value of the supply of services rendered by Mr. Santosh to H-J Family of Companies?

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

- a. H-J Family of Companies (hereinafter called the "Company") having its office in the United States, is engaged in the business of manufacturing and selling various categories of distribution transformer components and accessories.
- b. Mr. Rajendra Santosh (the "Applicant") had been hired by the Company as an "Independent Regional Sales Manager for the Middle East and Indian Markets". The letter of appointment issued on e-mail is produced.
- c. The applicant is required to make a presentation of the various categories of distribution transformer components and accessories offered by the company. The company specifies the presentation and the technical details of the aforementioned products.
- d. The applicant reports to a Sales Manager based in the office of the Company in Europe. The applicant is required to report the status of the sales development (with customers in the Middle East and Indian Markets) to the Sales Manager based in the European Office on a weekly basis.

- e. The Company conducts an annual meeting with all independent regional sales managers for the purpose of reviewing the future investments of the Company, cash flow and orders received by the Company as well as the new products being developed by the Company.
- f. The customers approached by the Applicant place their orders for the products with the Company and make payments to the Company's account. The Applicant does not raise any invoice for the products ordered by the said customers.
- g. The applicant is paid lump-sum compensation on a monthly basis for the aforementioned services. The applicant does not raise any invoice to the Company for the said services. In addition to the aforementioned compensation, the Company provides a credit card (that has been issued in the name of the company) for the purpose of reimbursing reasonable travel expenses, office needs and other business expenses incurred by the applicant in performing the said services.
- h. The Company provides him a company laptop, a company e-mail ID for the purpose of communicating with customers in the Middle East and Indian markets, company visiting cards as well as a server for making quotations to customers in the aforementioned markets.
- i. The applicant does not use any personal assets (such as his personal email ID or bank account) for the purpose of performing the said services.
- j. The applicant performs the said services from his home. He does not perform the said services from a registered office.
- k. The Company does not have a fixed place of business or tax residence in India as per the applicant's knowledge.

4. The applicant states that in terms of Section 7(2)(a) read with Entry 1 of the Schedule III of the Central Goods and Services Tax Act, 2017, the services by an employee to an employer in the course of or in relation to his employment is not a supply of services within the meaning of that term. Due to the fact that Sri Rajendran Santosh performs his services in exchange of a lump-sum monthly compensation in a manner specified by the employer (H-J Family of Companies) and his activities are performed under the direction, control and supervision of the employer, the services must be classified under Entry 1 of Schedule III of the CGST Act, 2017.

5. The applicant also submits that the applicant does not have independent clients in the Indian and Middle East markets. The applicant does not have the power to conclude contracts between his employer and the said clients, nor does he have the power to conclude such contracts in his own name. The applicant does not operate as an independent business entity, since he performs his services

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under the complete direction, control and supervision of the said employer. Hence the applicant is not performing a taxable supply in terms of the Act.

6. It is also submitted that the applicant does not receive any other commission, fees or separate consideration for the aforementioned services. In terms of section 2(109) read with section 7 of the Act, the supply of services must be made or agreed to be made for a 'separate consideration' in order to be taxable under the said Act. Since the applicant does not provide aforementioned services for a 'separate consideration' and only receives a salary as well as reimbursement of expenses incurred during his activities performed for his employer, the aforementioned services are not subject to the charge of GST under the Act.

7. It is also submitted by the applicant that in terms of section 22 of the Act, suppliers that are making taxable supplies in terms of the Act are liable to be registered under the Act. Since the applicant is not making a taxable supply in terms of the Act, he is not liable to be registered in terms of the said provision of the Act.

PERSONAL HEARING: / PROCEEDINGS HELD ON 30.08.2018.

8. Ms. Rupashri Khatri, Advocate and duly authorised representative of the applicant appeared for personal hearing proceedings held on 30.08.2018 & reiterated the facts narrated in their application and also made the following written submissions inter alia stating as under:

- a. That the copies of the returns under Income Tax Act of the applicant for the Assessment year 2017-18 and the Detailed Bank Statement for the account belonging to the Applicant evidencing the payments made to the applicant by H-J Family of Companies are submitted.
- b. That there is no agreement between the applicant and any customer of H-J Family of Companies in India.
- c. That there is no further agreement between the applicant and H-J Family of Companies other than the agreement purported to be the Letter of appointment.
- d. That the applicant is not authorised to make any taxable supplies of goods or services by H-J Family of Companies in India and is hence not liable for registration under this Act. In this regard, support is taken from the ruling of the Advance Ruling Authority in the State of Rajasthan dated 16.06.2018, in the case of M/s Habufa Meubelen B.V. (Indian Liaison Office) wherein it is ruled that any liaison office that does not render any consultancy or other services in India directly or indirectly, with or without consideration, and does not have significant commitment powers except those required for the normal functioning of the office, then the liaison office is not liable to get itself registered under GST.

9. FINDINGS & DISCUSSION:

9.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Ms. Rupashri Khatri, Advocate 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.

9.2 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.

9.3 The Applicant seeks advance ruling in respect of the questions mentioned at para 2 supra. The submissions of the applicant are examined and observed as under:

- (a) The applicant has produced a letter of the offer for services as Independent Regional Sales Manager, Middle East and India for a lump-sum compensation of 5600 USD as compensation for the services provided. The offer also states that all costs for mobile service, reasonable travel and entertainment, office needs and other business related expenses would be borne by the Company. The last line states "We are very much looking forward to your formal acceptance". There is a written words "Accepted the offer" and signed by the applicant. There is no formal letter of appointment from the company. Further, in the statement of facts, the learned representative has stated that there is no further agreement between the applicant and H-J Family of Companies other than the aforesaid letter.
- (b) The Return of Income Tax filed by the applicant for the Assessment Year 2017-18 shows clearly that applicant has declared the income as "Income from Business or Profession" and not as "Income from Salary".
- (c) There is no evidence of M/s H-J Family of Companies operational in India and the applicant has admitted that as per his knowledge goes the company does not have any physical presence in India. But the copy of the brochure of M/s H-J Family of Companies, submitted shows that the Company is having a branch office at Mysore and that Sri R. Santosh (applicant) is the regional Sales Manager, Middle East and India.
- (d) This gives some questions whether the applicant is an employee of the company or service provider. No evidence is produced by the applicant proving that he is an employee of the company but the returns filed to the Income Tax Department clearly shows the income as Income from Business and Profession. Further, even the designation says "Independent Sales Manager" which clearly shows he is not an employee of the company.



(e) In view of all the above the applicant is a supplier of services to the H-J Family of Companies.

9.4 Regarding the next question of classification of services rendered by the applicant to the company, the nature of work done by the applicant is examined. The applicant is required to make presentation of products of the company to the prospective clients of the company. The applicant reports to the Sales Manager of the company. Further, it is submitted that the applicant does not conclude any contract but only facilitates the conclusion of contracts of supply for which the applicant is reviewed by the Company. There is a fixed remuneration paid on a monthly basis for the services provided.

Clause (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017 defines an "intermediary" as under:

"(13) 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;"

In the instant case, the applicant is making presentation before the prospective clients and facilitates the supply of goods by the company for whom he is providing services and he does not supply such goods on his own account and hence squarely falls under the category of "intermediary" as per section 2(13) of the IGST Act, 2017.

Clause (120) of the section 2 of the Central Goods and Services Tax Act, 2017 states as under

"(120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;"

Since the word "intermediary" is not defined in the CGST Act but defined in the IGST Act, the same meaning as assigned to it under the IGST Act would be applicable even under the CGST Act, 2017.

In view of the above, the applicant is providing management services in marketing as an intermediary with a HSN Code of 9983 11.

9.5 Regarding the next question relating to whether the applicant is liable to be registered under the CGST Act, the answer is yes for the following reasons:

1. The applicant is providing services which are taxable and
2. The amount of consideration received is more than the threshold.
3. As per the notification no. 11/2017 - Central Tax (Rate) dated 28.06.2017, the entry no. 21 reads as under

Sl.No.	Chapter. Section or Heading	Description of Service	Rate (per cent.)	Condition
21	Heading 9983 (Other professional, technical and business services)	(i) Selling of space for advertisement in print media.	2.5	-
		(ii) Other professional, technical and business services other than (i) above	9	-

4. The nature of service rendered by the applicant, if it is an intra-State transaction, falls under clause (ii) of entry no. 21 of the Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 and hence is liable to tax at 9% under the CGST Act. Similarly it is also liable to tax under Karnataka Goods and Services Tax Act 2017 at 9% as per clause (ii) of entry no. 21 of the Notification (11/2017) No. FD 48 CSL 2017 dated 29.06.2017. But if it is an inter-State transaction, it would be liable to tax at 18% under clause (ii) of entry no. 21 of the Notification No. 8/2017 - Integrated Tax (Rate) dated 28.06.2017.
 5. Regarding the time of supply in relation to the aforementioned transaction, the time of supply would have to be determined as per the provisions of sub-section (2) of section 13 of the CGST Act, 2017. Regarding the value of the supply of services, the amount received by the applicant in relation to the services provided both directly and indirectly would be the value of supply of services. This would also include the amount of consideration reimbursed by the company to the applicant in the form of expenses incurred by the applicant, which will also form the consideration.
10. In view of the foregoing, we rule as follows


RULING

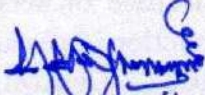
1. The services provided by the applicant to M/s H-J Family of Companies would result in the supply of services within the meaning of that term.



2. The services provided would be classifiable under HSN 9983.11 under the description "Other professional, technical and business services"
3. The applicant is required to be registered under the Central Goods and Services Tax Act, 2017
4. The rates of tax applicable for the service provided are
 - a. In case of intra-State Supply
 - i. Under CGST at 9%
 - ii. Under KGST at 9%
 - b. In case of inter-State supply at 18% under the IGST Act
5. The time of such supply would be determined as per the provisions of sub-section (2) of section 13 of the CGST Act, 2017 and the value of such supply would be the amount received by the applicant from the recipient of services and also includes the amounts reimbursed to the applicant by the recipient of services for the expenses incurred.




20.09.2019
(Harish Dharnia)
Member


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

Place : Bengaluru,
Date : 20.09.2019

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, Mysore Commissionerate, Mysuru.
4. The Asst. Commissioner, LGSTO-190, Mysuru.
5. Office Folder