

**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 ¹¹⁸ / 2019
Dated: 30th 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 Radox Laboratories India Private Limited, KIADB Industrial Area, 191-195, Bommasandra Jigani Link Road, Bengaluru - 560105
2.	GSTIN or User ID	29AADCR0074K1Z7
3.	Date of filing of Form GST ARA-01	04.05.2018
4.	Represented by	Sri R.K.Suchindra, Chartered Accountant
5.	Jurisdictional Authority - Centre	NA
6.	Jurisdictional Authority - State	LGSTO-025A, 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 SBIN18042900434983 dated 30-04-2018 2. Rs.5,000-00 under KGST Act vide CIN SBIN18042900434983 dated 30-04-2018

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

1. M/s Radox Laboratories India Private Limited, (called as the 'Applicant' hereinafter), KIADB Industrial Area, 191-195, Bommasandra Jigani Link Road, Bengaluru 560105, having GSTIN number 29AADCR0074K1Z7, has filed an application for Advance Ruling under Radox Laboratories

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Section 97 of CGST Act, 2017, KGST Act, 2017 read with Rule 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 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 questions:

- (1) Whether the applicant is liable to pay GST on the machines given to the customers under RRC/PRC models?
- (2) Whether the supply of reagents along with the machine rental and services in a RRC/PRC contract is a separate supply or a mixed supply or composite supply? If considered as composite supply, what is principal supply?
- (3) What is the rate of tax for the service of machine under RRC/PRC models?
- (4) What is the value on which GST has to be paid in case of RRC / PRC model and what is the time of supply?
- (5) Whether the applicant is eligible for the input tax credit on the purchase of machinery for use in RRC / PRC contracts?

The applicant has also asked seven more questions relating to proposed new models of business which he is thinking of introducing. But since these questions are not related to the activities undertaken, they are withdrawn at the time of hearing.

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that he is in the business of trading of medical diagnostic reagents and diagnostic equipment. He also provides services / spares relating to such equipment. The applicant imports equipment, reagents and spares from their group company. Only certain spares are procured domestically. Majority of the sales are made to the diagnostic centres across India through authorised distributors who purchase the reagents from the applicant and sell the same to end-customers.
 - b. In some cases, the equipment is sold outright separately to end-customers and the GST implications in these cases are clear and no questions on such direct sales are raised in this application for advance ruling.

In other cases, the equipment is also supplied in conjunction with supply of reagents on a rental basis. Currently the equipment is given on rental basis to the customers typically under two types of contracts as under:

- (i) The Reagent Rental Placement Contracts ('RRC') wherein the contract is for supply of equipment, reagents, controls and services, in conjunction. The equipment is supplied on returnable basis, i.e. the title in such equipment shall remain in the hands of Randox at all times, unless agreed to be sold to the customer at the end of the contract period. In consideration for the supplies of machines and reagents and services, the customer agrees to procure reagents at minimum levels stated in the agreement for predefined period (for eg. 5 years). If the minimum levels as stated in the contract is not met, the applicant can recover penal charges from the end customers as per the agreement. Though, the RRC agreements are entered into with end customers, for sake of trade convenience, the reagents are sold by the applicant to distributors in different states who shall in turn sell the goods to the end-customers.
- c. The other model is the Part Reagent Rental Placement Contract ('PRC') wherein the contract is worded akin to the contract in the RRC model except for the fact that an additional upfront non-refundable deposit is obtained from the end-customer.
- d. The applicant's main objective is to sell the reagents which are profitable to the applicant. As the reagents can be used only with the help of the analyser equipment, the applicant provides these machines to the customer for a fixed period as per the agreement with a condition that the minimum reagents are procured from the applicant by the customers. The applicant states that it can be observed from the contract document that the main objective of the applicant is to sell the reagents for which the machine is placed in the customer's premises for the use of the reagents. Further, the title to the machine remains with the applicant unless it is specifically mentioned in the agreement that title gets transferred after the conditions have been fulfilled. As the title is with the applicant, they are forming part of the fixed assets in the balance sheet of the applicant on which depreciation is being claimed under the Income Tax Act, 1961.



- e. The equipment given by the applicant is classifiable as services under GST Law as the title to the goods remain with the applicant. The SAC code of the service provided by the company fall under 997319 – Leasing or rental services concerning other machinery and equipments with or without operator. The applicable GST rate as per the Central Tax rate notification number 11/2017-CGST (rate) dated 28th June, 2017 is “same rate of central tax as on the supply of like goods involving transfer of title in goods”. The machines provided by the applicant falls under the HSN Code 90278090. The relevant entry as per the tariff is as under:

“INSTRUMENTS AND APPARATUS FOR PHYSICAL OR CHEMICAL ANALYSIS (FOR EXAMPLE, POLARIMETERS, REFRACTOMETERS, SPECTROMETERS, GAS OR SMOKE ANALYSIS APPRATUS); INSTRUMENTS AND APPARATUS FOR

- Other instruments and apparatus:

- - - Other.

The applicable tax rate is 18% as per the central tax notification no.1/2017- CGST (rate) dated 28th June 2017 vide entry number 417 as per schedule III to the said notification.

Accordingly, the rate of GST for renting of such machines shall also be 18% in terms of the entry in notification 11/2017-CGST (rate) stated above.

- f. The reagents sold by the company are classified under the HSN Code 3822 0090. The relevant entry as per the tariff is as under:

DIAGNOSTIC OR LABORATORY REAGENTS ON A BACKING, PREPARED DIAGNOSTIC OR LABORATORY REAGENTS WHETHER OR NOT ON A BACKING, OTHER THAN THOSE OF HEADING 3002 OR 3006; CERTIFIED REFERENCE MATERIALS

- Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials:

- - - Other

The applicable tax rate on reagents is 12% as per the central tax rate notification no.1/2017-CGST (rate) dated 28th June 2017 vide entry number 80 as per schedule II to the said notification



The company also performs maintenance services for the machine along with spares required for the machine.

4. Regarding the Question (1) relating to "Whether the applicant is liable to pay GST on the machines given to the customers under RRC/PRC models?" the applicant submits that the agreements contains certain clauses which can be extracted as under:

4.1 Extracts of the agreements:

(a) RRC/PRC contracts are entered into with end-customers, who are generally laboratories providing diagnostic services. Few key extracts of the agreement are provided below:

"2. In conjunction with the supply of the System, the Company agrees to sell Reagents, Calibrators, Controls and Wash Solutions (collectively referred to as Reagents) at prices at prices specified . . .

3. All the reagents specified to be used with the System will be supplied exclusively by the Company's authorised distributor during the period.

4. The Customer agrees to purchase Reagents from the Company at the prices mentioned in the agreement or at prices as revised from time to time as stated . . .

5. The Customer and the Company agree that subject to clause 11, the System will be returned promptly to the Company at the end of the period of 5 years unless the agreement is renewed on mutual terms. The system shall remain at all times and in all material respect the property of the Company."

The above extracts are from a typical RRC contract.

Under the PRC model, the contracts are similarly worded - additionally, a non-refundable deposit is obtained from the customer upfront. A typical contract in this case would state as

"2. In conjunction with the supply of the System, the Customer agrees to pay upfront, the Company, a sum of Rs.xxx. as non-refundable payment, forming a part of the contract while the Company agrees to sell Reagents, Calibrators, Controls and Wash Solutions (collectively referred to as Reagents) at prices specified. . . ."

Since both RRC and PRC contracts are materially similar to each other, the tax implications stated below are considered together for both RRC and PRC contracts.

(b) The applicant has quoted the provisions of section 9, section 7 and section 2(31) and has stated in his case, he is supplying machine rentals, reagents and services under the RRC/ PRC agreement for a consideration, which shall undoubtedly be taxable under GST Laws.



5 Regarding the second question as to "Whether the supply of reagents along with the machine rental and services in a RRC/PRC contract is a separate supply or a mixed supply or composite supply? If considered as composite supply, what is principal supply?", the applicant has made the following submissions:

5.1 Once the condition for supply has been met, it has to be analysed whether it is a mixed supply, composite supply or the reagents and the machine are separate supplies. He has quoted the provisions of section 2(30) and section 2(90) and states that for any supply to be treated as a composite supply, the following conditions have to be fulfilled:

- (a) It must be consisting of two or more taxable supplies of goods or services or both, which are naturally bundled;
- (b) It must be consisting of two or more taxable supplies of goods or services or both, which are supplied in conjunction with each other; and
- (c) One of such supply constitutes predominant element to which other supply is ancillary.

5.2 Reagent Rental Contracts (RRC) are entered into by the applicant for supply of machines, reagents, services and spares in conjunction with each other in consideration of the customer purchase minimum agreed quantities of reagents over a period of 5 years. This model ensures that the customer is no burdened with high investment incurred on the cost of the machine. At the same time, it promotes the sales of reagents by fixing minimum commitments from the customer, which is the primary product of the applicant. RRC contracts are necessitated out of business requirements owing to the nature of the customers, who would not prefer to be burdened with high upfront investment on the machine. The reagents can be used only with the diagnostic machinery and cannot be used independently by itself. This is an indication that the supply of reagents with the machine is naturally bundled in the course of business of the applicant.

5.2.1 Since the words "naturally bundled" is not defined under the GST laws, the applicant refers to the Education Guide to Service Tax released by the CBEC in July 2012, and a flier on composite supplies released by NACEN, the following can be extracted:

"9.2.4 Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which the services relate. Such normal and frequent practices

adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services, for example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example; service of stay in a hotel is often combined with a service of laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
 - o There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use
 - o The elements are normally advertised as a package
 - o The different elements are not available separately
 - o The different elements are integral to one overall supply – if one or more is removed, the nature of supply would get affected
- No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.”

5.2.2 In the current scenario, the fulfilment of the above indicative factors stated by CBEC in Educative Guide can be summarized as under:

Sl.No.	Particulars	Remarks
1	The perception of the consumer	The RRC/PRC contracts are perceived by the customers as a composite supply and not separate supplies. Though the products are available for purchase separately, customers



		<p>prefer these models since upfront cost for machine cannot be afforded by all the customers. Generally, the RRC/PRC based contracts account for 5-6 times the number of machines sold outright which indicates that the customer does not intend to purchase machines but wants a composite contract of machine rental plus reagents to be provided over the contract period. This is also evident from the extracts of sample agreement which have been provided elsewhere above.</p>
2	Majority of service providers in a particular area of business provide similar bundle	<p>The RRC/PRC models are a standard practice in this industry. Furthermore, these kinds of cases are commonly used business models in few other industries as well such as the high-end printing industry.</p> <p>Furthermore, it is relevant to note that the above practice of RRC/PRC models have been followed since many years in the past and is not a new phenomenon with the advent of GST regime.</p>
3	The nature of the various elements in the bundle	<p>As per the agreement, it is clearly expressed that the reagents shall be charged for at agreed prices, whereas machine rental and services will be provided in conjunction with the sale of reagents. The machine cannot be used without the reagents and reagents without the machine. The nature of elements in the bundle also demonstrate that they are naturally bundled together.</p>

4	<p>Other illustrative indicators:</p> <ul style="list-style-type: none"> • There is a single price; • The elements are normally advertised as a package • The different elements are not available separately • The different elements are integral to one overall supply 	<ul style="list-style-type: none"> • There is a single price for machine rental, reagents and services which are all combined into the price for the reagents • The RRC/ PRC contracts are advertised with end customers as a package • The different elements are available separately upon request by customers - however, RRC/PRC contracts are the more popular choice amongst end customers, so much so that the sales of the Company shall be significantly reduced if the RRC/PRC options are not provided to the end-customers. • The machine, reagents and services are integral to one overall supply, which is to enable the end customer to provide diagnostic services. Each of the elements have to be used together without which the end objective from point of view of the customer will not be achieved.
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5.2.3 The words "in conjunction" has not been defined under the GST Laws. As per the dictionary meaning, it means "in combination with; together with". Based on the agreement entered with the customer, the applicant is supplying the reagents along with the machinery and services in conjunction with each other. Hence the applicant submits that the machinery rental is supplied together with the sale of reagents - though not at the same point of time, it is supplied together over the contract period. Thereby the condition of supplies being in conjunction are fulfilled in case of the RRC/PRC models.

5.2.4 The applicant submits that in order to facilitate the sale of its reagents, the applicant has devised sales models of RRC/PRC which have been in vogue since past many years even before the onset of GST regime. Under these models, the applicant places analyser machines in the premise



of its customers for a specified period, generally of upto 5 years. This placement of the analyser is to facilitate the sale of its reagents and also to ensure that in case the customer gets accustomed to use the machine that is sold by the applicant, which shall result in further increase in the sale of reagents. The conditions for placing this analyser machine is after taking a commitment from the customer that the reagents totaling certain minimum committed value is mandatorily to be purchased from the applicant (through authorised distributors). Under these circumstances, since the core activity of the applicant is only resale of reagents.

5.2.5 The act of providing the analysers is only a marketing strategy for reagents, A company can adopt different modes of marketing its products. As the main objective of the applicant is selling of reagents, the applicant wishes to submit that the predominant element and thereby the principal supply under RRC/PRC model is sale of reagents while rental of machines and services are incidental to the same. This is further strengthened by the fact that the consideration for the supplies is factored into the price of the reagents to be sold over the period of the contract.

5.2.6 Without prejudice to anything stated herein above, and considering that the GST Laws in India are fairly nascent and some of these concepts are yet to be examined and elucidated by the Indian Courts, reference is drawn from international law. The applicant wishes to rely on judgement by the European Court of Justice in the case of Case Protection Plan Limited which is a landmark judgement under the EU VAT laws. Under the EU VAT laws the concepts of composite and mixed supplies are fairly similar to that under the GST Laws. In the said judgement the Hon'ble European Court had held that *"A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied."* In case of RRC / PRC contracts, the placement of machines will not achieve any aim for the customer since the machine by themselves cannot perform any diagnostic activities without the steady supply of reagents supplied by the applicant. It may be noted that the machines supplied under RRC / PRC contracts are closed systems in which reagents supplied by the applicant alone can be used and not reagents of any other entities. On the other hand, the customer has other alternatives in relation to placement of machines – such as outright purchase of machines or using machines of other vendors.

Hence, the applicant submits that the supply of reagents is the primary supply whereas the rental of machines ancillary as part of a composite supply.

5.2.7 To identify the principal and ancillary supplies, the applicant also submits that the sale value and margins of the reagents in an RRC / PRC contract is significantly higher than that of the machines. In a typical RRC / PRC contract, the minimum guaranteed values of reagents to be sold over the contract period shall be around 7-8 times the cost of the machine – the actual reagent sale value over the contract period may be even higher than the minimum guaranteed values. Even the margins on the reagents are significantly higher than the margins on the systems when sold separately. This further demonstrates that the reagents are the principal supply and machine rentals are ancillary to such principal supply. Therefore, the applicant submits that he is of the opinion that the sale of reagents with providing the rental of machines and services, would be a composite supply under the CGST Act, 2017.

5.3 On the third question, relating to “What is the rate of tax for the service of machine under RRC / PRC models?”, the applicant submits that since the same is argued to be treated as a composite supply with sale of reagents being the principal supply the rate of GST applicable should be 12% as applicable on the sale of reagents and the applicable HSN should be 3822 0090.

5.4 On the fourth question, relating to “What is the value on which GST has to be paid in case of RRC / PRC model and what is the time of supply?”, the applicant submits that

5.4.1 As per the sub-section (1) of section 9, the tax shall be levied on the value determined under section 15 and as per Section 15, the value of supply of goods or services shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

5.4.2 Furthermore, as per section 8, a composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply and hence the value as applicable to the supply of the principal supply shall apply for the overall composite supply.

5.4.3 The applicant also submits that in the RRC / PRC contracts, the transaction values are agreed therein, and the contract clearly mentions



that the reagents shall be sold through distributors. In view of the above, value of supply shall be the transaction value, i.e. the amount of consideration charged by the applicant for the reagents upon sale to distributors who in turn sell the reagents to customers. The applicant submits that no other value shall be assigned separately for placement of machines or services provided.

5.4.4 Similarly, the time of supply shall also be determined based on the principal supply – hence the tax shall be payable upon sale of reagent to the distributors who in turn sell them to end-customers. The time of supply shall not be at the time of placement of machine at customer's premises.

5.4.5 In addition to the above, in case of PRC contracts, a non-refundable deposit is received from customers. In case of non-refundable deposit, the deposit shall be applied as consideration for said supply. Accordingly, the same is to be taxed upon receipt from end-customers. However, the principal supply remains sale of reagents and hence the rate of tax on the non-refundable deposits shall also be as applicable on the reagents i.e. 12%.

5.5 On the fifth question, relating to “whether the applicable is eligible for the input tax credit on the purchase of machinery?” the applicant states that

5.5.1 As per section 16(1) of the CGST Act, the input tax credit shall be eligible as long as the registered person has used the inward supplies in course or furtherance of its business. Further, every person shall take the input tax credit on inward supplies unless it is specifically blocked under section 17(5) of the CGST/ SGST Act, 2017.

5.5.2 Section 17(5) inter alia includes “goods disposed of by way of gift or free samples”, and in case of RRC / PRC contracts the placement of machines at the customers premises cannot be stated to be gifted or provided as free samples especially since the title in such goods remain in the applicant at all material points of time. Since the applicant is supplying the machine with the reagents under the composite supply, the applicant submits that inward supplies of machine are being used in the furtherance of business and is eligible for input tax credit on the GST paid at the time of procurement of said machines.

6. FINDINGS & DISCUSSION:

The nature of contract is verified and found that there are two types of transactions and hence they need to be considered separately, one related to Reagent Rental Placement Contracts (RRC) and Part Reagent Rental Placement Contracts (PRC).

7. Reagent Rental Placement Contracts (RRC)

7.1 In this model, it is seen the applicant is selling the reagents to the distributors and the distributors are selling the reagents to the end-customers. There may not be any supply from the applicant to the end-customers in so far as reagents are concerned. In such cases, the applicant transfers the property in goods in the form for reagents to his distributors and the distributors in turn sell it to the end-customers.

It may be a fact that the goods may not be available in the open market except with the distributors and the contract between the applicant and end-customer may stipulate the purchase of reagents from the distributor, it does not say about the details of such distributor specifically. The moot point is whether the agreement signed between the applicant and the end-customer be binding on the distributor unless the condition to that effect is present in the contract between the applicant and distributor. But the applicant states very clearly that he is selling the goods to the distributor and the distributor is also selling the goods to the end-customer. Hence, it is clear that the supply of reagents to the end-customer is from the distributor and the applicant is merely facilitating such supply by binding himself to provide the reagents as the equipment would not work without the reagents.

7.2 As far as equipments are concerned, the equipments are imported from outside the country or sometimes procured within the country and taxes gets paid on such transaction of inward supply. The equipments are not transferred to the end-customer though the equipments are given to them for use. The applicant also capitalizes the cost of such equipments and also claims depreciation on such equipment so given for use. If any consideration is received for this transaction, this would amount to giving the equipments on rentals and the same would be liable to be taxed under the Acts. But in this model of business, there is no rental charged and the value of the asset is charged to the profit arrived on the supply of reagents. The applicant would also charge the end-customer for damages in case the end-customer does not order for a threshold quantity of the reagents and this act of toleration would amount to a service as consideration is received for this. Since, in this



RRC Model, there is no consideration involved in the providing of equipments and the ownership lies with the applicant himself, the same could not be called as "supplies" as per section 7 of the CGST Act/ KGST Act.

7.2.1 The sub-section (1) of section 7 of the CGST / SGST Act provides for the scope of supply and the same reads as under:

Section 7. Scope of Supply. -

(1) For the purposes of this Act, the expression "supply" includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

As per clause (a) above, the rental of goods would amount to supply transaction, of it is made or agreed to be made for a consideration in the course or furtherance of business. There is no dispute that this transaction involves delivery of goods for use and is in the course or furtherance of business. The only issue is about the consideration.

7.2.2 Clause (31) of section 2 of the CGST / SGST Act defines the term "consideration: 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;

In this the first clause specifies only the payments which are made or to be made in respect of supply of goods or services and since no payment of any amount is made to the applicant in respect of the supply of services for the use of equipments, the same cannot be covered under this clause. Whatever the consideration paid by the end-customer to the distributor, is related to the supply of reagents and hence is not related to the supply of equipments.

But there is an act of supply of equipment and in the second clause of the definition of "consideration", it is seen that 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. There is a clear inducement of supply of goods from the distributor and hence the monetary value of the act of supply of goods in the form of equipments would be the consideration for the supply of equipments. Since the monetary value of this transaction is Rs.NIL, this cannot be considered as the consideration.

Hence, the delivery of equipments by the applicant to the end-customer without any charge under this model would not amount to a supply under the Act.

7.3 The issue of time of supply of equipments by the applicant to the end-customer does not arise as there is no supply of equipments and the equipments remains the capital assets of the applicant.

7.4 The benefit the applicant is getting is the assured sales of his reagents which are either supplied by himself or which are supplied by the authorised distributors of the applicant. In this model, there is no separate charge for the equipments. Further, each order of supply of reagents would be treated as a separate contract of supply which are bound the terms of this parent contract as far as the value of that supply and are to be treated as independent supplies. It is in the discretion of the applicant whether the reagents are supplied directly by himself or the order is fulfilled by the authorised distributor of the applicant, and an invoice is raised for each of such supply of reagents, either by the applicant himself or by the authorised distributor, as the case may be. In



case the quantity of orders fall below a threshold, then the customer is invoiced for deficient orders and this would be charged for violation of the terms of the agreement which is a separate supply of "an act agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" for which consideration is charged by the applicant and the amount is paid by the end-customer, and this is irrespective of the fact whether the supply of reagents is made by the applicant himself or by his authorised distributor.

Hence there are three transactions involved in the transactions and they are

- (a) Provision of equipments free of charge – which is not a supply under the Act.
- (b) Supply of reagents either by the applicant or by the authorised distributor of the applicant out of their own stocks
- (c) Supply of services in the nature of "an act agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" for which a consideration is received.

Though all the above three are covered in a single contract, the three limbs are independent contracts which are linked to each other. They have separate considerations.

7.5 The issue of whether these contracts form a single composite contract is examined and found that these are independent contracts for the following reasons:

7.5.1 The first contract of provision of equipments is a supply by the applicant to the recipient, i.e. end-customer. This would not be treated as a supply but utilizing the capital goods for the purposes of business.

7.5.2 The second contract is a supply of reagents and is either supplied by the applicant himself or by the authorised distributor, out of their own stocks and is an independent sale-purchase transaction and the time of this supply is the date as per sub-section (2) of section 12 of the CGST / SGST Act.

7.5.3 The third supply is the supply of service by the applicant to the end-customer and the time of supply of such supply is the date determined as per sub-section (2) of section 13 of the CGST / SGST Act.

The clause (30) of section 2 of the CGST Act / SGST Act defines the "composite supply" as under

"composite supply" means **a supply made by a taxable person** to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are **naturally bundled and supplied in conjunction with each other** in the ordinary course of business, one of which is a principal supply;"

(emphasis supplied)

It is very clear from the contract that the applicant has detached the supply of equipments from the supply of reagents, in that the supply of reagents can be made either by himself or by his authorised distributor, at the discretion of the applicant. Since the delivery of equipments is not treated as a supply as per the provisions of the Act, there cannot be a composite supply involving it. Further, since the supply of goods in reagents and the supply of services in tolerating an act are not supplied in conjunction, they also do not form the composite supply.

7.6 Regarding the value of the supply of the supplies involved in the contract, the supplies of the reagents and the supplies of the services discussed above in paragraph 7.5.3 are taxable on the respective values determined as per Section 15 of the CGST Act / SGST Act. This would be normally on the value for which invoice is raised, which would be the transaction value. But in case of the provision of equipments free of cost, the same does not amount to supply and is only a usage of a fixed asset for the purpose of business and would be a cost on the sale of reagents.

8. Part Reagent Rental Placement Contracts (PRC)

8.1 In this contract of Part Reagent Placement Contracts (PRC) all the ingredients of the RRC contract are present with only one variation. In this contract, a non-refundable payment is made upfront by the end-customer to the applicant and there is no transfer of property in goods. The effective control of the equipments lies with the end-customer though there is no change in the ownership of the equipments. Since this payment is related to the equipments and is not related to the supply of reagents, which may either be supplied by the applicant himself or by his authorised distributor, this payment can be considered as the "consideration" and hence amounts to supply of equipments on rental basis with the lumpsum rent collected.

8.2 As far as the other supplies are involved, i.e. supply of reagents and



supply of services for tolerating the act of reduced purchase of reagents, the scheme of things as applicable to the RRC contracts are applicable here also.

8.3 Even here, since the supplies are not made in conjunction with each other and there are specific considerations for each of the supplies, the supplies cannot be treated as "composite supply" as per the provisions of the CGST Act/ KGST Act. The values are also separated and the value of supply of equipment would be the amount charged as non-refundable payment.

8.4 As far as the tax rates are involved, the following rates are applicable:

8.4.1. Where the delivery of equipments constitutes a supply of equipments on rental basis, i.e. as in PRC Contracts, the tax rate applicable is determined as under:

Entry No. 17 (iii) of the Notification No. 11/2017 –Central Tax (Rate) dated 28.06.2017 specifies as under:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
17	Heading 9973 (Leasing or rental services, with or without operator)	(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	-
		(vi) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv) and (v) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	-

Considering the fact there is a transfer of the right to use the equipments for a consideration, the value of such supply is taxable at the same rate of central tax as on the supply of like goods involving the transfer of title in goods. In this case, the goods are equipments which are covered under the HSN Code 9027 8090, the tax rate applicable is as under:

(a) 9% under the CGST Act as per Entry No. 417 of Schedule III to the Notification No. 01/2017- Central Tax (Rate) dated 28th June 2017

(b) 9% under the KGST Act as per Entry No. 417 of Schedule III to the

Notification No. (01/2017) No. FD 48 CSL 2017 dated 29th June 2017

Hence the rental services supplied in relation to the equipments without transfer of title in goods in case of PRC contract is liable to a tax of 9% under the CGST Act and 9% under the KGST Act.

8.4.2 The tax rate applicable on the supply of reagents, in case of supply made by the applicant, the same is determined as under:

The reagents are covered under HSN code 3822 0090 and the entry related to the same are covered under Entry

(a) Entry No. 80 of the Schedule II to the Notification No. 01/2017- Central Tax (Rate) dated 28th June 2017 and hence liable to a CGST at the rate of 6%

(b) Entry No. 80 of the Schedule II to the Notification No. (01/2017) No. FD 48 CSL 2017 dated 29th June 2017 and hence liable to a KGST at the rate of 6%

8.4.3 The tax rate applicable on the supply of services in the nature of "an act agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" for which a consideration is received, the same are covered under Entry No. 35 which reads as under:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

In view of the above, the tax rate applicable for the above services is determined as under:

The services are covered under HSN code 9997 and the entry related to the " other miscellaneous services including services nowhere else classified" and the same are covered under Entry

(a) Entry No. 35 of the Table to the Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017 and hence liable to a CGST at the rate of 9%

(b) Entry No. 35 of the Table to the Notification No. (11/2017) No. FD 48 CSL 2017 dated 29th June 2017 and hence liable to a KGST at



the rate of 9%.

9. The other question raised in in relation to the eligibility for the input tax credit on the purchase of machinery for use in the RRC / PRC Contracts. The matter is examined and found as under:

9.1 In case of both the contracts, the equipments are purchased by the applicant and tax is paid on the same..

Clause (19) of section 2 of the CGST / KGST Act defines "capital goods" as under:-

(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

Since the equipments are capitalized in the books of account, and are used in the course or furtherance of business, they form the "capital goods" of the applicant. The act of claiming depreciation on the value of these assets under the Income Tax Act, 1961 also points to the fact that they are capitalized in the books of accounts of the applicant.

9.2 Clause (62) of section 2 of the CGST Act / KGST Act defines the "input tax" as under

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- but does not include the tax paid under the composition levy;

Clause (63) of section 2 of the CGST Act / KGST Act defines the "input tax credit" as under

(63) "input tax credit" means the credit of input tax;

The input tax paid on such equipments, since is a tax charged on any supply of goods or services or both made to him, the same would qualify as input tax, in relation to the applicant and hence the credit of such tax would qualify as input tax credit.

Section 16 which deals with the "Eligibility and conditions for taking input tax credit", reads as under:

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Since the applicant is using the goods in equipments, as capital goods, in the course or furtherance of his business, he is eligible to take the credit of input tax charged on any supply of such goods. But this is subject to the condition and limitation prescribed for capital goods in sub-section (3) of section 16 and also under section 17.

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

RULING

1. The applicant is liable to pay GST on the machines / equipments given to the customers under the PRC Model but is not liable to pay GST on the machines / equipments given to the customers under the RRC model.
2. The supply of reagents along with the machine rental services in both RRC and PRC contract is a separate supply independent of machine rental services supplied, if any
3. The rate of tax for the supply of rental service of equipments is 9% CGST and 9% KGST.
4. The value on which GST has to be paid and the time of supply are
 - a. in case of RRC Model
 - i. for the supply of reagents - at the time of supply of reagents on the transaction value



- ii. for the supply of services in the nature of "an act agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" for which a consideration is received - at the time of supply of such services on the transaction value
- b. In case of PRC Model
- i. For the supply of rental services in equipments - at the time of supply of the equipments on the amount of non-refundable payment received or invoiced
- ii. for the supply of reagents - at the time of supply of reagents on the transaction value
- iii. for the supply of services in the nature of "an act agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" for which a consideration is received - at the time of supply of such services on the transaction value

5. The applicant is eligible for the input tax credit on the purchase of equipment for use in RRC / PRC contracts.


30.09.2019
(Harish Dharnia)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009
Date: 30.09.2019


(Dr. Ravi Prasad M.P.)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore
4. The Asst. Commissioner, LGSTO-025A, Bengaluru
5. Office Folder