

**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 84/2019

Date: 25-09-2019

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 Sameera Trading Company, No.28, Embitte Complex, 1 st Floor, Bellary Road, 22 nd Ward, Hospet, Bellary District - 583201
2.	GSTIN or User ID	29AAFFS4471E1Z2
3.	Date of filing of Form GST ARA-01	20.02.2019
4.	Represented by	Sri Purushothama Bhat N, GSTP
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Belgaum Commissionerate, Belagavi
6.	Jurisdictional Authority - State	LGSTO-500, Hosapete
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 vide CIN SBIN19032900050113 dated 08.03.2019 and Rs.5,000/- under KGST Act 2017 vide CIN SBIN18122900374452 dated 27.12.2018.

**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 Sameera Trading Company, (called as the 'Applicant' hereinafter), No.28, Embitte Complex, 1st Floor, Bellary Road, 22nd Ward, Hospet, Bellary District - 583201, having GSTIN 29AAFFS4471E1Z2, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 & KGST Act 2017 read with Rule 104 of the CGST Rules 2017 & KGST Rules 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

Sameera Trading Co.



2. The Applicant is a Partnership firm and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether GST is applicable on local sale of used second hand Wind Turbine Generator (WTG) / (Wind Mill) with accessories?

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that they are into the business of generating electricity from Wind Mills and have installed 108 wind mills. They entered into a power purchase agreement with Bangalore Electricity Supply Company Limited.
 - b. The applicant is now desirous to sell 42 mills located in one geographical area on as is where basis without dismantling them. The land lease is to be got transferred by the buyer from the Government and the buyer has to enter new electricity purchase agreement with the Government. The applicant has nothing to do with the post sale activity and is limited only to sale of the Wind Mills.
4. Regarding the applicability of GST, applicant refers to the Notification No.10/2017 – Central Tax (Rate) dated 28.06.2017 in which it is stated as under:

The Government exempts “intra-State supply of second hand goods received by a registered person dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules, 2017 from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017)”

PERSONAL HEARING: / PROCEEDINGS HELD ON 29.04.2019.

5. Sri. Purushothama Bhat N, GSTP and duly authorised representative of the applicant appeared for personal hearing proceedings held on 29.04.2019 & reiterated the facts narrated in their application and also submitted copies of power purchase agreement between the applicant & BESCOM Ltd., along with relevant documents and copy of the sale agreement between the applicant and M/s SS International, Bengaluru.

6. FINDINGS & DISCUSSION:

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Purushothama Bhat N, GSTP 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.

6.2 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.

6.3 The transaction of the applicant is examined and found that the applicant is selling the installed wind mills on as is where basis and the prospective purchaser may dismantle them or continue the business on their volition. In the agreement between the applicant and the buyer it has been clearly stated that the applicant is engaged in the business of generation and sale of electricity through their own wind turbine generator located in the State of Karnataka. This clearly shows that the applicant is engaged in the primary activity of generation of electricity. They are not engaged in the activity of sale and purchase of second hand goods. Now we examine the contentions of the applicant in the matter before us.

6.4 In their application, at serial number 15, the applicant states that Rule 32(5) of the CGST Rules, 2017 and Notification No. 10/2017-Central Tax (Rate) dated 28.06.2017 apply to their transaction and accordingly there is no liability to pay tax on the transaction under question.

6.5 The transaction of the applicant involving the sale of the wind mills is covered under Clause 4 of Schedule II of the CGST Act, 2017 as the transaction involves disposal of business assets. Accordingly the activity of sale of wind mills amounts to supply of goods. In this supply the applicant is the supplier, as defined under Section 2(105) of the CGST Act, 2017.

6.6 Rule 32(5) of the CGST Rules, 2017 reads as under:

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor



processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored: Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

A plain reading of the aforesaid Rule reveals that this Rule applies only in the situation where the supplier is involved in buying and selling of second hand goods. In the instant case the applicant is dealing in the generation and sale of electricity and not in buying and selling of second hand goods. Therefore this Rule would not apply to the transaction under examination.

6.7 Now we also examine the Notification as quoted by the applicant. Notification No.10/2017 - Central Tax (Rate) dated 28.06.2017 is reproduced below for ease of reference:

*Notification No.10/2017-Central Tax (Rate) New Delhi, the 28th June, 2017
G.S.R. (E).-*

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services tax Rules, 2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017).

2. This notification shall come into force with effect from the 1st day of July, 2017.

This Notification is issued under Section 9(4) of the CGST act, 2017 and applies in situations where the supplier is an unregistered person and the registered recipient is required to discharge tax on reverse charge basis. In the instant case the applicant is the supplier and is a registered person. Therefore this Notification is not relevant to the transaction in hand. We, therefore, do not agree with the applicant's contention.

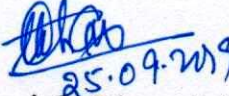
7. Wind Mills and accessories are proposed to be sold for a single price and hence it amounts to a composite supply with the supply of wind mills being the principal supply. Wind Mills are covered under entry 234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 and the supply of the same is liable to CGST at the rate of 2.5%. Similarly, the supply of wind mills is taxable at 2.5% under the Karnataka GST Act, 2017.

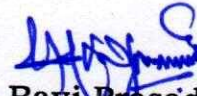
8. In view of the foregoing, we pass the following

RULING

1. The Supply of Used Wind Turbine Generator (WTG) or Wind Mill with accessories is a composite supply of Wind Mills and is liable to tax at 2.5% under CGST Act, 2017 in terms of entry 234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017
2. Similarly, it is taxable at 2.5% under KGST Act, 2017.




25.09.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Bengaluru,

Date: 25.09.2019

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, Belgaum Commissionerate, Belagavi.
4. The Asst. Commissioner, LGSTO-500, Hosapete .
5. Office Folder