

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009
Advance Ruling No. KAR ADRG 101/2019**

Date: 27-09-2019

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	Sri Roopesh Kumar., No.122/136,4 th Main,1 st Cross, Hongasandra, Begur Main Road, Bengaluru - 560068
2.	GSTIN or User ID	29AMAPK0069R1ZK
3.	Date of filing of Form GST ARA-01	27.03.2019
4.	Represented by	Sri Shankar.P GSTP,
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore South, Bengaluru
6.	Jurisdictional Authority - State	LGSTO 015 A - Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each Under CGST Act & KGST Act vide CIN SBIN19012900405663 dated 23-01-2019

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

1. Sri Roopesh Kumar, (called as the 'Applicant' hereinafter), having GSTIN number 29AMAPK0069R1ZK, have 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/- each under the CGST Act and the KGST Act.

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

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- a) Whether the applicant has to charge GST for the service (providing Hydraulic excavator and ten wheeler tippers to transport RDF (inerts) from KCDC processing plant Bommanahalli to Bellahalli Land fill site near Yelahanka) done to government organization? If so at what rate?
- b) Whether this service (providing Hydraulic excavator and ten wheeler tippers to transport RDF (inerts) from KCDC processing plant Bommanahalli to Bellahalli Land fill site near Yelahanka) done to government organizations is exempted by way of Entry No.3 of the Notification No 12/2017 which provides exemption to Pure service (Excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government authority or Union territory or local authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243 G of the constitution or in relation to any function entrusted to a Municipality under article 243 W of the Constitution?
- c) Whether activity done by us is in relation to function entrusted to a municipality under 243W. Whether any exemption is available under GST in respect of service rendered by us to KRIDL (which is a Government Organization)?
- d) Whether exemption is available under GST in respect of service rendered by us to KRIDL (Which is a Government Organization)?

The applicant has subsequently withdrawn the third question.

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

3.1 The applicant is proprietary concern engaged in the business of excavation and transportation of RDF (Refused derived fuel) by using earth-moving equipments and tipper.

3.2 BBMP had been ordered for shifting of refuse-derived fuel from Karnataka Compost Development Corporation waste processing plant to Bellahalli landfill site in Yelahanka.

3.3 Subsequently the BBMP has appointed Karnataka Rural Infrastructure Development Limited (KRIDL) for shifting the waste from KCDC plant to Yelahanka site. In the instant case, Karnataka Rural Infrastructure Development Limited (KRIDL) subcontracted the same work to applicant to shift the waste from KCDC plant to Yelahanka site.



3.4. The applicant has used Hitachi, ten wheeler tippers on hire basis to collect the waste from KCDC plant by using tarpaulin to cover the waste and unload the waste at a landfill site in Yelahanka and also do the leveling of the waste at the landfill site after unloading the waste. The effective control of the vehicle vested with the applicant and payment for the above service is received on the basis of number of loads transported from KCDC plant to Yelahanka landfill site at the end of the day.

3.5. The contention of the applicant is that this is service provided to KRIDL as government authority in relation to the activity specified in article 243W of the Indian Constitution as pure service is being exempted from the payment of taxes as Notification No.12/2017 Central Tax (Rate) on 28.06.2017 has been subsequently amended by Notification No.2/2018 Central Tax (Rate) on 25.01.2018.

3.6. Karnataka Rural Infrastructure Development Limited (KRIDL) is a Government of Karnataka Undertaking and is registered under the Companies Act, 2013 with 100% shareholding by the Government of Karnataka.

3.7. However, the applicant contends that BBMP is a Municipality and as per Article 243W of 12th Schedule of the Constitution the functions entrusted to the municipality are as under.

- a. Urban planning including town planning.
- b. Regulation of land use and construction of building.
- c. Planning for economic and social development.
- d. Roads and bridges.
- e. Water supply for domestic, industrial and commercial purposes.
- f. Public health, sanitation conservancy and solid waste Management.
- g. Fire services.
- h. Urban forestry, protection of the environment and promotion of ecological aspects.
- i. Safeguarding the interests of the weaker sections of society, including the handicapped and mentally retarded.
- j. Slum improvement and up-gradation.
- k. Urban poverty alleviation.
- l. Provision of Urban amenities and facilities such as parks, gardens, playgrounds.
- m. Promotion of Cultural, educational and aesthetic aspects.
- n. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
- o. Cattle pounds prevention of cruelty to animals.
- p. Vital statistics including registration of births and deaths.



- q. Public amenities; including street lighting, parking lots, bus stops and public conveniences.
- r. Regulation of slaughter houses and tarneries.

9. Sri Shankar P, GSTP and the authorised representative of the applicant, appeared for personal hearing proceedings held on 27-03-2019 and reiterated the facts narrated in their application.

10. **FINDINGS & DISCUSSION:**

10.1 We have considered the submissions made by the Applicant in his application for advance ruling as well as the submissions made by Sri Shankar.P, GSTP during personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

10.2 The applicant has placed four questions before this advance ruling authority. All the questions relate to the rate of tax applicable on the transaction and the relevant entry under which the exemption, if available, can be allowed. Hence all questions are merged into one and answered.

10.3 It is seen from the contracts between the BBMP and KRIDL which is named as "Providing of Hydraulic Excavator for lowering and levelling at Bellahalli Landfill site for the inert shifted from KCDC near Yelahanka Bangalore" and "provision of Hydraulic Excavator and ten wheeler tippers to transport RDF inerts", the contract is for shifting the inert from the KCDC plant to the Yelahanka land filling site, compacting and filling it using machineries. The same is covered under different work orders.

10.4 The entire work involves only labour and services and does not involve any goods. It is a composite supply under the meaning of composite supply as defined in section 2(30) of the CGST Act involving only services. It is not a works contract as there is no supply of goods but only a supply of services, even if it is considered as "leasing of machineries and vehicles" or "transportation of goods".

10.5 Entry No. 3 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 reads as under:

"Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental authority or a Government entity by way of an activity in relation to any function entrusted to a Panchayat under

Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution."

Three conditions need to be satisfied for a service to be covered under this entry of the notification so that the same can be exempted and they are:

1. It must be pure service not involving any supply of goods
2. It must be provided to the Central Government, State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity
3. It must be an activity in relation to any function entrusted to a
 - (i) Panchayat under Article 243G of the Constitution; or
 - (ii) Municipality under Article 243W of the Constitution

Regarding the first condition, it is clear from the nature of work that the activity does not involve any supply of goods but only services and hence the first condition is satisfied.

Regarding the third condition, it is seen that the same is an activity related to the solid waste management which is a function entrusted to a Municipality under Article 243W of the Constitution and hence the third condition is also satisfied.

Regarding the second condition, the services are supplied by the applicant to KRIDL which is neither Central Government nor State Government nor Union Territory nor Local Authority. It remains to be examined whether the recipient of supply of services from the applicant i.e. KRIDL is a Governmental Authority or Government entity or not?

The term "Governmental Authority" is defined under clause (zf) of para 2 of the Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 as under:

"(zf) "governmental authority" has the same meaning as assigned to it in the Explanation to clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)"

The Explanation to clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 defines "Governmental Authority" as under:

"Governmental Authority means an authority or a board or any other body, -

- (i) *set up by an Act of Parliament or a State Legislature; or*
- (ii) *established by any Government,*

with ninety percent or more participation by way of equity or control, carry out any function entrusted to a Panchayat under article 243G



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or to a municipality under article 243W of the Constitution.”

M/s KRIDL is established as a Company by the Government of Karnataka and is entrusted the work of creating assets in the State of Karnataka and hence is not a Governmental Authority as per the definition of the term.

Further the issue whether KRIDL is a Government entity or not is examined. The term “Government Entity” is defined in clause (zfa) of paragraph 2 of Notification No.12/2017 – Central Tax (Rate) as amended by Notification No.32/2017- Central Tax (Rate) dated 13.10.2017 as under:

*“(zfa) “Government Entity” means an authority or a board or any other body including a society, trust, corporation,
(i) set up by an Act of Parliament or State Legislature; or
(ii) Established by any Government,
with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority”.*

M/s KRIDL is established by the Government of Karnataka and the State Government has full control over the organisation and hence the KRIDL is a Government Entity and hence the second condition is also satisfied.

Hence the services provided by the applicant to KRIDL are covered under the entry no.3 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 w.e.f 25.01.2018.

Further, it needs to be examined whether the services provided by the applicant are covered under entry 3A of the 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

“Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union Territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.”



It can be seen from the nature of activity of the applicant that there is no involvement of goods and only services are provided. Further the supply is not a "composite supply of goods and services". Hence the activity of the applicant is not covered under entry 3A of the 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.

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

RULING

The activity undertaken by the applicant is exempt from payment of taxes as per entry number 3 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 with effect from 25.01.2018.


27.09.2019

(Harish Dharnia)

Member



(Dr. Ravi Prasad M.P.)

Member



Place: Bengaluru

Date: 27.09.2019

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, Bengaluru.
4. The Asst. Commissioner, LGSTO – 15A, Bengaluru
5. Office Folder