

MAHARASHTRA AUTHORITY FOR ADVANCE RULING.
GST Bhavan, 8th floor, 'H' Wing New building, Mazgaon, Mumbai-400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAACG1376NIZC
Legal Name of Applicant	KANSAI NEROLAC PAINTS LIMITED
Registered Address/Address provided while obtaining user id	NEROLAC HOUSE, GANPATRAO KADAM MARG, LOWER PAREL, Mumbai City, Maharashtra, 400013
Details of application	GST-ARA, Application No. 84 Dated 04.10.2018
Concerned officer	Dy. Commr. of S.T.(E-611) LTU, Unit-4, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing
B Description (in brief)	Company is engaged in manufacture and sale of decorative and industrial paints to its customers, across the states from its factories and depots located all over India.
Issue/s on which advance ruling required	(iii) determination of time and value of supply of goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s KANSAI NEROLAC PAINTS LIMITED, seeking an advance ruling in respect of the following question.

Whether supply of goods by one distinct entity (Factory/depot) as defined under sec 25(4) of the CGST Act 2017 as amended to another distinct entity having same PAN (Factory/depot) can be valued at a price declared on the invoice raised by the supplier of goods under second proviso to Rule 28 to CGST Rules, 2017?

The above said question is reframed during the course of hearing and new question is as follows.

"Whether value of supply of goods by one distinct entity (Factory/depot) as defined under sec 25(4) of the CGST Act 2017 as amended to another distinct entity (Factory/depot) can be determined on the basis of our cost of production. Our cost of production depends mainly on cost of inputs and input services hence the same fluctuates with the price of inputs and input services".

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is

specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Additional submissions-

We write with reference to aforesaid subject in connection to hearing under subsection (4) of section 98 of the CGST/MGST Act 2017 regarding pronouncement of advance ruling on the questions specified in our application in GST ARA 01 as reframed subsequently.

1. Background

1.1 In this connection, we like to bring it to your kind attention that we Kansai Nerloac Paints (herein after referred as the Company) is registered under Central Goods and Service Tax Act, as taxable person, engaged in supply of goods and supply of service.

1.2 Company is engaged in manufacture and sale of consumer and industrial paints to its customers, across the states from its factories and depots located all over India. To reach out customers on time and to maintain optimum inventory at depot level, there is always flow of goods from factory to depot and from depot to depot. All depots and factories are engaged in supplying only taxable goods. In some instances company supplies paints at free of cost but after duly discharging GST on taxable value of such goods as per open market value. Apart from paints, there is also flow of raw materials, capital goods and other goods from one factory to another factory across the country. At present company is discharging GST liability on such transfer of paints, raw materials, capital goods and other traded goods from one factory/depot to another factory/depot, after valuing them on the basis of one hundred and ten percentage of manufacturing cost as prescribed under rule 30 of the CGST Rules 2017.

1.3 As per second proviso to Rule 28 of CGST Rules 2017, value of supply of goods by one distinct entity to another distinct entity where the recipient is eligible for full input tax credit, would be the value declared in the invoice.

1.4 Factories and depots of the company are duly qualified distinct entity as per sec 25(4) of CGST Act 2017 and all the factories and depots located across the country are eligible for full input tax credit.

1.5 Company is exploring an option to determine the value of supply of goods as per second proviso to Rule 28 of CGST Rules, 2017, and apply the same by replacing the existing method of valuation of goods, one hundred and ten percentage of manufacturing cost as prescribed under rule 30 of CGST Rules 2017.

**2. Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).
Legislative provisions.**



- 2.1 Factories and depots of the company having same permanent account number (PAN) under Income Tax Act but bearing distinct registration number under GST law will be considered as distinct entities under sec 25(4) of CGST Act 2017.
- 2.2 Inputs, capital goods and outputs are supplied by one distinct entity to another distinct entity will be valued as per CGST Rules 2017.
- 2.3 Rule 28 of CGST Rules 2017 governs valuation of supply of goods from one distinct entity to another distinct entity.
- 2.4 As per Rule 28 of CGST Rules 2017, value of supply of goods between distinct entities will be based on open market value of the said goods.
- 2.5 Second proviso to Rule 28 of CGST Rules 2017 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services
- 2.6 According to Rule 30 of CGST Rules 2017 the value shall be one hundred and ten percentage of the cost of production or manufacture of such goods.
- 2.7 Rule 30 of CGST Rules 2017 will be applicable if Rule 27, Rule 28 and Rule 29 of CGST Rules 2017 are not applicable.

2.8 Since transactions undertaken by the company under discussion are amongst the distinct entities as defined under sec 25(4) of CGST Act 2017, valuation of the said transactions will be duly covered under Rule 28 of CGST Rules 2017.

2.9 Therefore Rule 30 of CGST Rules 2017 will not be applicable on the company and as per second proviso to Rule 28 of CGST Rules 2017, whatever value company will declare on invoice will be considered as Open Market value for the purpose of determine taxable value of goods.

3 Question on which advance ruling is required

Whether value of supply of goods by one distinct entity (Factory/depot) as defined under sec 25(4) of the CGST Act 2017 as amended to another distinct entity (Factory/depot) can be determined on the basis of our cost of production. Our cost of production depends mainly on cost of inputs and input services hence the same fluctuates with the price of inputs and input services.

4 Our submission

- 4.1 To reach out to customers on time and to maintain optimum inventory at depot level, there is always flow of goods from factory to depot and from depot to depot. All depots and factories are engaged in supplying only taxable goods.

- 4.2 Apart from paints, there is also flow of raw materials, capital goods and other goods from one factory to another factory across the country.
- 4.3 At present company is discharging GST liability on such transfer of paints, raw materials, capital goods and other traded goods from one factory/depot to another factory/depot, after valuing them on the basis of one hundred and ten percentage of manufacturing cost as prescribed under rule 30 of the CGST Rules 2017.
- 4.4 Factories and depots of the company having same permanent account number (PAN) under Income Tax Act but bearing distinct registration number under GST law will be considered as distinct entities under sec 25(4) of CGST Act 2017.
- 4.5 Thus inputs, capital goods and outputs are supplied by one distinct entity to another distinct entity will be valued as per CGST Rules 2017.
- 4.6 Rule 28 of CGST Rules 2017 governs valuation of supply of goods from one distinct entity to another distinct entity.
- 4.7 Second proviso to Rule 28 of CGST Rules 2017 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.
- 4.8 Accordingly second proviso to Rule 28 of CGST Rules 2017 empowers us to declare cost of inputs/outputs as open market value.
- 4.9 Rule 30 of CGST Rules 2017 provides that the value shall be one hundred and ten percentage of the cost of production or manufacture of such goods and the said rule will be applicable only if Rule 27, Rule 28 and Rule 29 of CGST Rules 2017 are not applicable.
- 4.10 Since transactions undertaken by the company under discussion are amongst the distinct entities as defined under sec 25(4) of CGST Act 2017, valuation of the said transactions will be duly covered under Rule 28 of CGST Rules 2017.
- 4.11 Therefore Rule 30 of CGST Rules 2017 will not be applicable on the company and as per second proviso to Rule 28 of CGST Rules 2017, cost price which the company will declare on invoice will be considered as Open Market value for the purpose of determine taxable value of goods.

In this connection your kind attention is invited to the Advance Ruling pronounced by Advance Authority of Ruling Kolkata on the same issue in the case of In re GKB Lens Pvt Ltd (AAR Kolkata) (Copy enclosed)

Prayer: In view of the aforesaid facts of the case. provisions of the law and Advance Ruling pronounced by the AAR Kolkata, we humbly pray to your kind self to allow us to supply goods/inputs from our one factory/depot (distinct entity as defined under sec 25(4) of the CGST Act 2017 as amended) to another factory/ depot (another distinct entity) on the basis of our cost of production. Our cost of production depends mainly on cost of inputs and input services hence the same fluctuates with the price of inputs and input services.

03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

With reference to above subject in case of , M/S KANSAI NEROLAC PAINTS LIMITED. GSTIN:

27AAACG1376N2ZB, it is submitted that, Issue on which advance ruling is required:

Whether supply of goods by one distinct entity (factory / depot) as defined under section 25(4) of CGST Act 2017 as amended, to another distinct entity having same PAN (factory / depot) , can be determined in terms of the cost price under second proviso to Rule 28 of CGST Rules 2017.

Acceptance/rejection of application-

As per Section 98 (2) of CGST Act 2017, the above issue on which Advance Ruling is required is acceptable under – Determination of Value of Supply of goods)

Legal Submission: Rule 28: -

CGST Rule 28: Value of supply of Goods or Services or both between Distinct and Related Persons, other than through an Agent (Chapter-IV: Determination of Value of Supply)

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Rule 28 deals with valuation of supply when it is made between distinct or related persons. If a person obtains or is required to obtain more than one registrations in more than one state then in accordance to the provisions under section 25 of CGST Act, each registration shall be treated as "distinct persons " for the purpose of the CGST Act. The Applicant at the time of personal hearing has informed that separate registrations have been obtained for business establishments in different states. These independently registered business establishments are referred as factory or depots.

Thus, supplies to these depot from manufacturing units or depot to depot, qualify as supplies made between the distinct persons and provisions of Rule 28 will be applicable for valuation of such supplies.

And dealer is eligible for Input tax credit. Hence, "The applicant is eligible to value these goods by applying the terms of the Second Proviso to Rule 28 of CGST Act.

04. HEARING

Preliminary Hearing in the matter was held on 27.11.2018. Sh. Subhasis Banerjee, FCA, and Sh. Sandesh Shinde, Executive Accounts appeared and requested for admission of application as per contentions made in their application. At the time of hearing on admissibility of the application, applicant was informed that the question raised in the application as aforesaid

was not covered by the scope of section 97 of the GST law. They were given eight days' time to reframe the question. The applicant has reframed the question on 04.12.2018 and was called on 16.01.2019 for hearing when Sh. Subhasis Banerjee, FCA, along with Sh. Sandesh Shinde, Executive Accounts appeared and argued the question. Jurisdictional Officer Ms. Manjiri Phansalkar, Dy. Commissioner of S.T. (E-611) LTU, Unit-4, Mumbai, appeared and made written submissions. The application was admitted and called for final hearing on 27.02.2019, Sh. Subhasis Banerjee, FCA, along with Sh. Sandesh Shinde, Executive Accounts appeared and submitted written submissions. The Jurisdictional officer Ms. Manjiri Phansalkar, DC of S.T. (E-611) LTU, Unit-4, Mumbai, appeared and made written submissions. We heard both the sides.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is in respect of a determination of value of supply of goods on the transactions between the distinct entities which would be on the lines thus -

M/s Kansai Nerolac Paints (herein after referred as the Company) is registered taxable person under GST Act, and is engaged in supply of goods and supply of services. Company is engaged in the manufacture and sale of decorative and industrial paints to its customers, across the states from its factories and depots located all over India. To reach out to the customers on time and to maintain optimum inventory at depot level, there is always movement of goods from factory to depot and from depot to depot. The Factories and depots of the company are duly registered under GST and are qualified as a distinct entity as per section 25(4) of CGST Act 2017. All the factories and depots located across the country are eligible for full input tax credit.

As per the application, applicant is desirous of obtaining ruling on matter that is related to change of valuation method of Rule 30 to Rule 28 of the GST, Rules. We have gone through the facts of the case. The uncontroverted fact of the case is that applicant is engaged in manufacture and sale of consumer and industrial paints and as per the business model and with the objective to reach out customers on time and to maintain optimum inventory at depot level situated across the country, moves goods from factory to depot and vice versa. The movement of goods among and between the factories and depots consists of paints, raw material, capital goods and other goods. All the factories and depots of the company share same PAN under Income Tax Act. However, and as undisputed by the applicant depot and factory being distinct entities under Sect.25 (4) of the CGST Act 2017, have obtained separate registration numbers under the provision of GST Act. On this factual background applicant has raised following question as stated above. Thus the question raised in this application related to determination of value of supply of goods between distinct persons as provided under chapter IV: Determination of Value of Supply of the GST Rules, 2017.



As per the contention of the applicant, at present the company is discharging GST liability on transfer of goods from one Registrant to another Registrant of the company and the value of supply is determined on the basis of Rule 30 of the GST Rules, meaning thereby that the value of supply is considered at one hundred and ten percentage of the manufacturing cost. Now, the applicant, by filing present application, want to explore the value of supply of goods as per Rule 28 and in particular the second proviso of the said rule and whether they can opt for the same. We shall now refer to Rule 28, Rule 30 and Rule 31 to understand the basis of Valuation Rules. The rules are reproduced as below:

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) *be the open market value of such supply;*
- (b) *if the open market value is not available, be the value of supply of goods or services of like kind and quality;*

(c) *if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

29. Value of supply of goods made or received through an agent.

The value of supply of goods between the principal and his agent shall-

- (a) *be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.*

Illustration: A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.



(b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

30. Value of supply of goods or services or both based on cost.

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

31. Residual method for determination of value of supply of goods or services or both.

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring Rule 30.

As per the scheme of GST, tax is payable on ad-valorem basis and taxable value is the transaction value i.e. the price actually paid or payable, provided the supplier and recipient are not related and the price is the sole consideration. In the case at hand, the factory, the depots located in different states sharing common PAN but different GST registrations are distinct persons as specified in subsection (4) of Section 25 of the GST Act. Under the GST law, various categories of persons such as related persons, distinct persons have been identified as the relation between the supplier and recipient may influence the consideration. In such cases specific rules have been provided. Rule 28 of the GST Rules, has been specified to determine the value of transaction between related persons. We also find that Rule 30 will come in to operation in a situation where the value of a supply of goods or services or both is not determinable by any of the rules preceding Rule 30 of the Chapter IV of the GST Rules. Thus Rule 28 is the specified rule to determine the value of supply in a transaction where supplier and recipient are related. As per rule 28 of the value of supply shall be as per following priority:

- (a) Open market value
- (b) Value of supply of like kind and quality
- (c) Value of supply as determined by application of rule 30 or 31.

However, as per second proviso to Rule 28, if the recipient is eligible for full input tax credit, the invoice value will be deemed to be open market value. Applicant has informed this authority that they intent to issue invoice inter alia declaring value of supply liable to GST and they further informed that the recipient is eligible to claim full input tax credit. We do not find any breach by the applicant by changing the method of determination of value of supply by application of Rule 28 instead Rule 30 of the GST Rules.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 84/2018-19/B-

30

Mumbai, dt.

19/03/2019

For reasons as discussed in the body of the order, the questions are answered thus -

Question: "Whether value of supply of goods by one distinct entity (Factory/depot) as defined under sec 25(4) of the CGST Act 2017 as amended to another distinct entity (Factory/depot) can be determined on the basis of our cost of production. Our cost of production depends mainly on cost of inputs and input services hence the same fluctuates with the price of inputs and input services".

Answer:-As discussed above applicant can apply Rule 28 of the GST Rules, 2017 to determine the value of supply of goods for supply of goods by one distinct entity (factory/depot) as defined u/s25(4) of the CGST Act to another distinct entity having same PAN (factory/depot).




B. TIMOTHY
(MEMBER)


B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State Tax, Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made within 30 days from the receipt this order before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, address at 15th floor, Air India building, Nariman Point, Mumbai - 400021.