

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING

6th Floor, VANIJYA TERIGE KARYALAYA

KALIDASA ROAD, GANDHINAGAR, BANGALORE-560009.

(Constituted under Section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bengaluru, dated 25-04-2018)

ORDER NO.KAR/AAAR/07/2018-19

DATE: 01/03/2019.

BEFORE THE BENCH OF

- (1) Sri D.P.Nagendrakumar, Member.
- (2) Sri Srikar M.S., Member

GSTIN Number	29AADCN9558Q1ZC
Legal Name of Appellant	M/s. Nash Industries (I) Pvt.Ltd
Registered Address	No.236-237/2,8 th Main Road, Peenya Industrial Area,3 rd Phase, Bengaluru-560058
Details of appeal	Appeal against Advance Ruling No.KAR ADRG 24/2018 dated 25 th October 2018
Date of filing appeal	05.12.2018
Jurisdictional Authority - Centre	ANWD-2,The Commissioner of Central Tax, North West Commissionerate, Bengaluru
Jurisdictional Authority - (State)	LVO 075- BENGALURU
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	CIN :HDFC18122900008012 dt 03.12.2018 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the Central Goods and Service Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the KGST Act are *parimateria* and have the same provisions in like matters, and differ from each other only on a few specific provisions; therefore, unless a mention is particularly made to such a dissimilar provision, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

The present appeal has been filed under section 100 of the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to

as “ the CGST Act and KGST Act”) by M/s. Nash Industries (I) Private Limited,(herein after referred to as the “Appellant”) against the Advance Ruling No. No. KAR ADRG 24/2018 dated 25th October 2018.

BRIEF FACTS OF THE CASE

1. M/s. Nash Industries (I) Private Limited is registered under GST with GSTIN No. **29AADCN9558Q1ZC** and is a manufacturer of sheet metal pressed components and supplies to industrial customers like Automotive, Banking Hardware, Power Protection, Alternate Energy etc. The tools required to manufacture these components were designed and manufactured by the Appellant. Such manufactured tools are billed to the customer and the payment is received for the same but the tools are retained by the Appellant for the manufacture of components.

2. The Appellant had filed an application for Advance Ruling under section 98 of the CGST Act, 2017 and KGST Act, 2017 on the following question:

a. Whether the amortized cost of the tools is to be added to arrive at the value of the goods supplied for the purpose of GST under Section 15 of the CGST Act read with Rule 27 of CGST Rules.

3. The Karnataka Authority for Advance Ruling, vide Advance Ruling No. ADRG 24/2018 dated 25th October 2018 (hereinafter referred to as ‘Impugned Order) gave the following ruling:

“The amortised cost of tools which are re-supplied back to the applicant free of cost shall be added to the value of the components while calculating the value of the components supplied as per Section 15 of the CGST/KGST Act,2017.”

4. Aggrieved by the said ruling of the Authority, the applicant has filed an appeal under section 100 of the CGST Act, 2017 / KGST Act, 2017 on the following grounds:

4.1. The appellant submitted that the purchase order provided by the recipient/customer is only for the manufacture of components out of the tools supplied by the recipient at free of cost.

4.2. Further, the appellant submitted that the CBIC vide Circular No.47/21/2018-GST dated 08.06.2018 has clarified the position regarding amortization of tool cost supplied free of cost by the customer, to the value of components manufactured by the component manufacturer. The relevant extract of the circular is provided below:

Sl. No	Issue	Clarification
1	Whether moulds and dies owned by Original Equipment Manufacturers(OEM) that are sent free of cost (FOC)	1.1.Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there

<p>to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?</p>	<p>is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM.</p> <p>1.2.It is further clarified that while calculating the value of the supply made by the component manufacturer , the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of Section 15(2)(b) of the Central Goods and Service Tax Act,2017(CGST Act for short)</p> <p>1.3.However,if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business</p>
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4.3. They submitted that the above circular covers two situations, which are as follows:

- a. The value of the moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer.
- b. The contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis-the amortised cost of such moulds/dies shall be added to the value of the components.

4.4. They submitted that in the instant case,

- a. The obligation of the supply of tools is on recipient /customer.
- b. Accordingly, the owner of the tool is recipient /customers.
- c. The recipient /customer provided the purchase order to appellant, wherein the scope is merely supply of components.

From the above it is evident that the present case falls under the first situation explained in the above circular. That means, the tool is owned by the OEM (Customer) and supplied at free of cost to appellant. Further, the purchase order is provided for supply of component. As the present case falls under first situation, the cost of the tool is not to be added to the price of component as per the clarification provided by the board.

4.5. Further, they submitted that the cost of the tool is required to be added only if the tool is belonging to the component manufacturer (Appellant). In the present case, the owner of the tool is the recipient / customer and hence the cost of tool is not required to be added to the price of the component; that the scope of the Appellant's activity is limited to manufacture and supply of components; that, the burden of supply of tools is on the customer and not on the Appellant. Therefore, the tool supplied by the customer at free of cost is not required to be added to the cost of components manufactured by the Appellant.

4.6. The appellant drew attention to the provisions of Section 15 of CGST/KGST Act,2017 and submitted that there is no amount which was liable to be paid by the Appellant but incurred by the recipient. Instead the agreement between the Appellant and the customer is only for manufacture and supply of components and not to manufacture the tool. That being the case, the cost of the tool is not be included in the value of components manufactured and supplied by the appellant to the customer.

4.7. The appellant further submitted that the earlier decisions of Central Excise cannot be applied to GST. The Central Excise duty was levied and collected on the activity of the manufacture, whereas the levy of GST is on the supply of goods/services. Further, the scope of supply depends on the scope of the agreement and obligation of the supplier in the agreement. If there is no obligation on the supplier on any aspect, such aspect cannot be constituted as supply and also cannot be considered as value of supply.

4.8. In view of the above submissions, the Appellant pleaded that the ruling of the Authority for Advance Ruling is required to be modified.

Personal Hearing:

5. The Appellant was called for a personal hearing on 19.02.2019 and were represented by Shri. Rajesh Kumar T.R, Chartered Accountant. He reiterated the submissions made in the grounds of appeal. The representative also filed additional written submissions before this Authority wherein they stated that the Maharashtra Authority for Advance Ruling in the case of M/s Lear Automotive India Private Ltd had passed a ruling GST-ARA-19/2018-19/B-80 dated 31.07.2018 on the same issue i.e whether amortized value of the tool received on FOC basis from the customer is required to be included in the value of finished goods manufactured and supplied by the applicant to the customer. The Maharashtra AAR had based on the facts and circumstances of the case before them, held in the negative. Relying on the above said order they submitted that the same is also applicable in their case. During the personal hearing, this Authority asked for the details of the terms of the contract between the

Appellant and their customer to be furnished in order to understand each party's obligations. The representative agreed to submit it in due course.

6. The Appellant through their representative Chartered Accountants submitted copies of the following additional documents vide letter dated 28.02.2019.

a) Purchase order of tool and component of the same design

b) Comparison of facts of M/s Nash Industries (I) Pvt Ltd with M/s Lear Automotive India Pvt Ltd along with supporting documents.

DISCUSSION AND FINDINGS

7. We have gone through the records of the case and taken into consideration the submissions made by the Appellant in writing and during the personal hearing and also the documents produced by them.

8. The short point for determination is whether the value of the components manufactured and supplied by the Appellant should include the cost of the tools which are supplied by the customer free of cost and used by the Appellant in the manufacture of the components.

9. Under the erstwhile Central Excise regime, Rule 6 of the Central Excise Valuation Rules, 2000 required an assessee to calculate the intrinsic value of the excisable goods by including any additional consideration flowing directly or indirectly from the buyer to the assessee. In other words, since excise duty was levied on the activity of manufacture, any activity which was contributing to the manufacturing activity was included in the assessable value irrespective of the fact as to who owned the inputs and capital goods. In view of the same, the Appellant was amortizing the value of such tools supplied by their customers free of charge and was including the same in the assessable value of the final goods for discharging applicable Central Excise duty. With the advent of GST with effect from 1st July 2017, a provision similar to the erstwhile Rule 6 of the Valuation Rules does not exist thereby warranting the question whether, under the GST regime, the value of the tool cost is required to be amortized.

10. Under the GST regime of taxation, the taxable event which attracts the levy of GST is the 'supply' of goods or services, in terms of Section 9 of the CGST (and SGST) Act or Section 5 of the IGST Act, depending on whether the transaction of 'supply' is intrastate or interstate. The word 'supply' has not been defined under the GST law but rather the scope of what constitutes 'supply' is stated in Section 7 of the CGST Act which reads as under:

7. (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.

In so far as the valuation of the supply is concerned, Section 15 of the CGST Act provides that the value of taxable supply shall be the transaction value which is the price paid or payable by the recipient provided the supplier and recipient are unrelated parties and price is the sole consideration for the supply. Further Section 15(2)(b) of the said Act specifically states that where any amount which the supplier is liable to pay in relation to a supply but the same has been incurred by the recipient on behalf of the supplier, then such amount is required to be added while determining the transaction value.

11. In the present case, there is no dispute on the fact that the Appellant and their customers are not related parties. We need to examine whether the price paid by the customers is the sole consideration for the supply made by the Appellant. For this purpose, it is necessary to understand the contractual arrangement between the Appellant and their customers to see whether the scope of the supply mandates that, the Appellant is to incur a cost for the manufacture and use of the tool but the same has been supplied by the customer free of charge. In the course of the present appeal proceedings, the Appellant has provided us with details of the contract and purchase orders placed by their OEM customer M/s Daimler India Commercial Vehicles Pvt Ltd (DICV).

12. We have gone through the terms (General and Special terms) of the contract entered into between the Appellant and DICV. As per para 16 of the General Terms and Conditions of DICV for the purchase of products and spare parts, which form an integral part of the contract between DICV and the Appellant, the Appellant is obligated to comply with the requirements of DICV's Special Terms pertaining to tooling. Para 16.2 reads that "*If and to the extent the agreed total cost for an item of tooling has been paid by Buyer in full, title to such tooling and any and all IPR created in the course of the development of such tooling for buyer will immediately be transferred to Buyer. Supplier is entitled to keep the tooling only as a temporary possession until the Purchase Order has been performed. Supplier must hand over the tooling to Buyer following fulfillment of the Purchase Order if so requested by Buyer.*"

13. The Daimler India Special Terms (DIST) are a set of rules governing the supply arrangement between DICV and the Appellant. The DIST forms an integral part of the contract along with the General Terms and Conditions of DICV for the purchase of products that are specifically mentioned in the purchase contract. The relevant provisions of the DIST relating to tools are reproduced hereunder:

1.4. With regard to tools, a distinction must be made between tools which are or will become the property of DICV (hereinafter "DICV Owned Tools") and tools which are not the property of DICV (hereinafter "Non-DICV Owned Tools")

To ensure the aforementioned distinction is made appropriately, DICV Asset Accounting team will provide Asset Identification Tags to the supplier, which should be affixed in the most appropriate place of DICV Owned Tools.

Regardless of ownership, the supplier must handle all tools and other production equipments with the degree of care necessary to guarantee that DICV is properly supplied without any interruption.

2.1 The supplier is hereby authorized and required to use DICV Owned Tools within the framework of the supply contract concluded with DICV concerning the parts to be manufactured with the tools.

The supplier shall use the tools only for the purpose of fulfilling its manufacturing obligations under the supply contract. Hence the supplier is prohibited from any deviating use of DICV Owned Tools in particular the use of tools for production of parts to supply third parties or the transfer of usage to third parties or unauthorized handover of tools to third parties, without the prior written consent of DICV.

2.2 The supplier shall retain DICV Owned Tools at the location as originally agreed between the supplier and DICV

2.4 As a consideration for availing the tools from DICV free of charge, the supplier shall abide by the following terms of maintenance. The supplier must ensure constant defect-free functional capacity and readiness of the tools during their use within the framework of the supply contract with DICV for the purpose of uninterrupted delivery to DICV by means of continuous maintenance and repair at its own expense.

2.5 In the event where changes in DICV's technical specifications require any modifications to the tools, the supplier must submit a prior written offer to DICV to modify the tools with the least possible expenditure.

2.6 The supplier must clearly and permanently identify those tools which are DICV Owned Tools as the property of DICV.

2.8 At the end of delivery or termination of contractual relationship with the supplier, the supplier shall return the tools to DICV in the condition to be expected following proper fulfillment of the supplier's duties arising from these DIST.

3. Insofar as Non-DICV Owned Tools are concerned, DICV shall obtain ownership of the existing and subsequent tools by way of security in order to ensure delivery.

DICV reserves its right to demand surrender of tools to DICV in the event of an interruption in delivery. In this case, DICV may reimburse the supplier the percentage of the tool costs which had not yet been amortised. Upon reimbursement of such costs, DICV shall be deemed to have unlimited ownership of the tools.

14. On going through the above terms and conditions of the contract between the Appellant and DICV, it is evident that the Appellant is required to use DICV Owned Tools concerning the part to be manufactured with the tool. The tool shall be used only for the purpose of fulfilling its manufacturing obligations under the supply contract. The Tool is developed and manufactured by the Appellant under a specific Purchase Order. The applicable GST on the supply of the tool is levied in the invoice raised by the Appellant for the supply of the Tool. Once the agreed cost of the tool has been paid by DICV, the title of

the tool and all IPR created in the course of the development of the Tool will be transferred to DICV. The Appellant is entitled to keep the tool in his premises only as a temporary possession until the completion of the supply of components manufactured using the tool. During the course of temporary possession of the tools owned by DICV, the Appellant is required to affix Asset Identification Tags on the DICV Owned Tools in order to identify the DICV owned tool. On completion of the contractual relationship, the Appellant is required to return the tools to DICV. In so far as Non-DICV Owned Tools are concerned, the terms of the contract state that in order to ensure uninterrupted supply of parts, DICV will obtain ownership of the existing and subsequent tools by way of security. Thus it is evident that, in this case, the customer, DICV, has assumed the responsibility to provide the tools to the Appellant in the interest of ensuring that there is uninterrupted supply of their parts. While the first priority is that the supplier should use the DICV Owned Tools for the manufacture of the component parts, there is also the possibility that Non-DICV Owned Tools can also be used for the manufacture of parts for the customer. In the event of the second possibility, the customer, DICV takes ownership of the Non-DICV Owned Tools by way of a security only with the objective of ensuring that the supply of their parts by the Appellant is uninterrupted. In the event there is an interruption in delivery of manufactured components using the Non-DICV Owned Tools, then the customer, DICV, has the right to demand the surrender of the tools and reimburse the Appellant the percentage of the tool cost which has not been amortized. On perusal of the contract, it is understood that, in the case Non- DICV Owned Tools are used in the manufacture of the components, the price agreed upon includes the amortized cost of the Non-DICV Owned Tools.

15. The CBIC in its Circular No 47/21/2018-GST dated 08.06.2018 has clarified that goods owned by OEM that are provided to a component manufacturer on FOC basis do not constitute a supply as there is no consideration and in such cases, the value of goods provided on FOC basis shall not be added to the value of supply of components. However, in case the contractual obligation is cast upon the component manufacturer to provide moulds/dies but the same have been provided by the OEM on FOC basis, then the amortized cost of the moulds/dies is required to be added to the value of the components supplied. In the present case, the terms and conditions of the contract between the OEM DICV and the Appellant clearly indicate that no such obligation is cast on the Appellant. The OEM has taken the responsibility to provide the tools. In a case where the tools are developed and manufactured by the Appellant according to the requirements of the customer (DICV), then the total cost of the tools is borne by DICV and the title of the tools transfers to DICV, while the Appellant is allowed to retain the tool in his premises for undertaking the manufacture and supply of the components to DICV. In such a case, the value of the tools, which has already suffered tax and supplied FOC to the Appellant, is not required to be added to the value of the components supplied by the Appellant.

16. We accordingly set aside the ruling of the AAR and hold that the cost of the tools supplied by the OEM customer on FOC basis to the Appellant is not required to be added to the value of the components supplied by the Appellant. We emphasize that the ruling given by us in this appeal proceeding is based on examination of the contract and purchase orders furnished by the Appellant in the case of their customer M/s Daimler India Commercial

Vehicles Pvt Ltd. This ruling will apply to other contracts entered into by the Appellant only if the terms and conditions contained therein are the same as those contained in the contract placed before us.

17. The appeal is disposed off accordingly on the above terms.



(D.P. NAGENDRAKUMAR)

Member

Karnataka Appellate Authority
for Advance Ruling



(M.S. SRIKAR)

Member

Karnataka Appellate Authority
for Advance Ruling