

## **Karnataka VAT –GST**

### **1. Hubli - Dharwad Municipal Corporation (KAR ADRG 26/2021 dated 19/04/2021)**

#### **Issue:**

Whether supply of Man Power services provided by M/s KEONICS and M/s GEMINI SECURITY AND ALLIED SERVICES to applicant which are in the nature of Pure services as per the Notification No. 12/2017 of CGST(rate) read with Notification No.02/2018 CGST (rate) are exempted from GST

#### **Decision:**

The applicant M/s Hubli Dharwad Municipal Corporation, filing the advance ruling application was a recipient of services. The applicant was availing the services from M/s KEONICS by way of supply of IT professionals for Information technology System development and Maintenances for Municipal Corporation activities and also availing security services from M/s Gemini Security and Allied services by way of supply of security guards.

The authority drew reference to Sec 95(a) of the CGST Act which provided the definition of the term “advance ruling” to mean

“a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in 97(2) or 100(1), in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

Further, section 95(c) of the CGST Act 2017 defines “Applicant” as any person registered on desire of obtaining registration under the said Act.

In the instant case, we observe that M/s HDMC, who have filed the instant application is not a supplier of either goods or services or both but is a recipient of services. Thus, the instant application is not admissible and liable for rejection in terms of Sec 98(2) of the CGST Act, 2017

### **2. Page Industries Limited (KAR/ADRG 54/2020 dated 16/04/2021)**

#### **Issue:**

Whether in the facts and circumstances of the case the promotional products/materials & marketing items used by the Appellant in promoting their brand & marketing their products can be considered as “inputs” as defined in Sec 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as input tax credit in terms of Sec 16 of the CGST Act, 2017

#### **Decision:**

The Appellant was engaged in the manufacture, distribution and marketing of Knitted and woven garments under the brand name “Jockey” and swimwear and swimming equipment under the brand name “Speedo”. The Appellant also gets the garments manufactured from job workers. The Appellant

market /sell their products through their franchises and distributors / dealers. To promote their brands and market their products, the Appellant is availing advertisement agency services such as ads in the print media, electronic media, outdoor advertising etc and also procuring the promotional items and marketing material such as display boards, uniforms to staff, posters, gifts and hoardings etc. to display their products at the point of purchase

The Applicant is paying taxes on the procurement of advertising services and promotional products or materials and has approached the authority to understand the availment of taxes paid on such products or services.

The Authority held as under:

Based on a detailed analysis of the provisions under section 16 & 17 under the CGST Act, 2017, the Authority said that the goods procured on payment of GST which are disposed of by way of gifts are barred from being eligible for input tax credit in terms of sec 17(5)(h), even if they are used in the course or furtherance of business.

The promotional products / materials & marketing items used by the Applicant in promoting their brand and marketing their products can be considered as “inputs” as defined in Sec 2(59) of the CGST Act, 2017. However, the GST paid on the same cannot be availed as input tax credit in view of the provisions of Sec 17(2) and Sec 17(5)(h) of the CGST Act, 2017

### **3. SPSS South Asia Pvt Ltd (KAR ADRG 15/2021 dated 24/03/2021)**

#### **Issue:**

Classification of the supply of software license by the applicant whether it amounts to supply of goods or services

#### **Decision:**

The Applicant is a Private Limited Company, registered under the Goods and Services Act, 2017 and is an authorized reseller for various IBM SPSS software in India. The Applicant is a pure trader in such software and does not develop / modify any software prior to selling it to a customer. The Applicant sought advance ruling w.r.t. its coverage under the Notification 47/2017 and Notification 45/2017.

The Applicant receives Purchase orders from its customers towards order confirmation and in turns issues a purchase order to its principal entity in Singapore.

GST under reverse charge is paid for the imports so made from its purchasing entity

The Applicant provides a download link to the software that provides the software license code to its customer.

It was observed that the software supplied by the applicant is a pre-designed or pre-developed software and made available through the use of encryption keys and hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of ‘goods’.

Further, the goods which are supplied by the applicant can't be used without the aid of computer and has to be loaded on a computer and then after the activation would become usable and hence the goods supplies is "Computer software" and more specifically covered under "Application software".

The notes to the classification of services stipulates that the services of limited end-user license as part of packaged software are excluded from SAC 997331.

Hence, the supply made by the applicant is covered under "supply of goods" and is covered under tariff heading 8523.

#### **4. Olety Landmark Apartment Owner's Association (KAR ADRG 12/2021 dated 10/03/2021)**

##### **Issue:**

Whether the applicant is liable to pay GST on amounts which it collects from its members  
For setting up the 'Sinking fund / Corpus Fund'

##### **Decision:**

The applicant is a non-profit making residents welfare Association formed by individual apartment / flat owners for the purpose of maintaining and managing the common areas and facilities in the condominium and the Applicant is duly registered under the provisions of Karnataka Apartment Ownership Act, 1972 (KAOA Act) and also registered under the GST Act.

The Applicant submits that in addition to regular maintenance, they are also required to undertake periodic keep-up of the structure of the building by painting the exterior/common areas; replacement/repair of major equipment such as lifts, generators etc. for which they collect certain amounts "Sinking fund" from the members, under its bye-laws to meet the aforesaid planned or unplanned capital outlay in future. The accounts of the said sinking fund were maintained separately and utilized for the specific purpose but not for regular maintenance activity.

The Authority drew reference to Sec 2(31) of the CGST Act, 2017 which defines the term "consideration" and also to Sec 13(2)(a) which stipulates that the time of supply.

Based on the interpretation of the provisions under the Act, the Authority concluded as under

It was held that the amounts collected by the applicant towards Sinking Fund amount to advances meant for future supply of services to members, covered under SAC 9995 "Services of Membership Association" and are taxable at 18% GST in terms of Sl.33 of Notification No. 11/2017 – Central Tax (rate) dated 28/06/2017 as amended, as the time of supply is receipt of advance amounts in terms of Section 13(2)(a) of the CGST Act, 2017.

#### **5. Yulu Bikes Private Limited (KAR AAAR 03/2021 dated 02/02/2021)**

##### **Issue:**

Whether renting of e-bikes, bicycles without operator can be classified under the SAC 9973 – Leasing or rental services without operator – Sl. No 17(viia) of Notification No. 11/2017 Central Tax (Rate) dated 28<sup>th</sup> June 2017 as amended

**Decision:**

The Appellant is engaged in renting of vehicles like e-bikes (Miracle), bicycles (Move) in Bengaluru, Karnataka through a technology driven platform. They enter into contract or agreement with the customers with regard to usage or renting of the e-bikes, bicycles and charge based on the time of usage of such vehicles. The Appellant is charging 18% on renting of e-bikes Miracle and Move under HSN code 9966. The Applicant was of the understanding that the services of renting of e-bikes to customers would be more correctly classifiable under HSN 9973 as “Leasing or rental services without operator”.

The authority examined in detail, the terms of the User agreement, various Notifications issued and the provisions under the Act.

On such detailed analysis, it is observed that what is permitted is the permission to have access to the vehicles and use the same in designated areas / regions for the designated period of time. There is absence of any transfer in the right to use the goods and hence held that the Appellant does not get covered under Entry Sl. No 17(iii) of the rate notification.

The appropriate correct Entry is Sl. No 17(via) i.e. leasing or renting of goods and the rate of tax will be the same rate of tax as applicable on supply of like goods involving transfer of title in goods.

**6. KSF-9 Corporate Services Pvt Ltd (KAR ADRG 02/2021 dated 29/01/2021)**

**Issue:**

Whether the applicant should charge GST @ 18% for providing manpower services only on the service charges or on the total bill amount

**Decision:**

The applicant company is registered under the provisions of the GST Act and is engaged in providing security services such as providing guards and manpower services and housekeeping service based on requirements of the customers and contract awarded.

The applicant has stated that they have entered into an agreement with Kuvempu University, Shimoga for providing security guards and housekeeping services on contract basis and applicant was successfully awarded this contract through e-tender procurement bid.

Based on the analysis of the various provisions of the Act, terms agreed and the Notifications etc, the Authority held as under:

Reference is given to Sec 9(1) of the Act which stipulates that CGST shall be levied on all intra-state supplies of goods or services or both, on the value determined u/s 15. As per Sec 15(1) of the CGST Act, 2017, “the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration of the supply”.

In the instant case, the applicant was charging service charges @ 2%, in addition to the wages.

Held that the value of taxable supply of manpower services is the transaction value

## **7. Midcon Polymers Pvt Ltd (KAR AAAR 01/2021 dated 11/01/2021)**

### **Issue:**

Whether the applicant can seek deduction of property taxes and other levies for arriving at value of rental income

Whether notional interest on security deposit shall be considered for arriving at rental income

General exemption of Rs. 20 lacs, whether applicable?

### **Decision:**

The Appellant is engaged in the business of renting of commercial property on monthly rents and allied business. The Appellant intends to enter into a commercial agreement of renting of immovable property with Educational Institution in Bangalore. The contract is on the basis of the reserved monthly rent and also refundable caution deposit or security deposit.

As per the terms of the contract, the deposit received shall be returned without interest on the termination of the tenancy.

The Authority referred to Sec 15 of the CGST Act, 2017 which specifies the manner of determination of value of supply of goods and services. It also mentioned that the said section specifically lists out the exclusions from the value, to be made, while arriving at the taxable value and the taxes thereon.

Based on the above, it was held as under:

- a. Held that, for the purpose of arriving at the value of rental income, the Appellant cannot deduct the amount paid as property tax to the Municipal Authority or any other statutory levies under any law for the time being in force, other than the CGST, SGST, IGST and compensation cess, subject to the condition that it is charged separately by the applicant
- b. For the purpose of arriving at the rental income, the notional interest earned on the security deposit is not to be taken into consideration.

## **8. Mfar Constructions Pvt Ltd vs ACCT, Karnataka HC dated 26/02/2021)**

### **Issue:**

Claiming the Input tax credit based on Annual return i.e. VAT 240 without filing the monthly returns

### **Facts & Decision:**

The company was engaged in the business of execution of civil works, contracts like construction of apartment and commercial complexes. The company is filing returns of turnover keeping in view the statutory provisions as contained in the Karnataka Value Added Tax, 2003.

The company had got the accounts of the company audited by a Chartered Accountant and furnished the audited statement of accounts in form VAT 240 and considered the same as the basis for availing the Input tax credit.

The Court, in the instant case, held that, merely because the dealer has submitted audited statement of accounts in Form 240, he is not entitled for Input tax credit. Form 240 is only an audited statement of accounts issued by the Cost Accountant / Chartered Accountant. It can never be construed as returns to compute the net tax liability u/s 10(3).

The High court held that the writ petition is justified in being dismissed as the appellant was claiming input tax credit based on Form 240. Also held that Form 240 cannot be treated as a return for the purpose of claiming input tax credit.