

2018-TIOL-36-AAR-GST

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 06 / 2018

Dated: 23rd April, 2018

Present:

1. Shri. Harish Dharnia,
Joint Commissioner of Central Tax,
Bengaluru.

... Member (Central

Tax)

2. Dr. Ravi Prasad M.P.
Joint Commissioner of
Commercial Taxes (Vigilance)
Bengaluru

... Member (State Tax)

1.	Name and address of the applicant	M/s Rajashri Foods Pvt. Ltd., 17, Platform Road, Seshadripuram, Bengaluru - 560 020.
2.	GSTIN or User ID	29AAACR6946B1ZC/ 291700000129ARM
3.	Date of filing of Form GST ARA-01	21-12-2017
4.	Represented by	S Amarnath, Director
5.	Jurisdictional Authority - Centre	BND2 Range, Division 2, Bengaluru North Commissionerate, Crescent Road, Bengaluru-560 001.
6.	Jurisdictional Authority - State	LVO -130, BMTB Bus stand, Yeshwanthpur, Bengaluru - 560 022
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.10,000-00 CGST : Rs.5,000-00 and SGST : Rs.5,000-00 CIN: SBIN17122900184487 dated 19-12-2017

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

M/s Rajashri Foods Private Ltd., (hereinafter referred to as 'Applicant') holding GSTIN number 29AAACR6946B1ZC, having registered address at #17, Platform Road, Seshadripuram, Bengaluru - 560 020 have filed an application in form GST ARA-01 on 19.12.2017 seeking Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017. They enclosed copy of challan for Rs.10,000/- bearing CIN number SBIN17122900184487 dated 19-12-2017 towards the applicable fee.

2. The applicant, having three manufacturing units situated at Ramanagara, Hiriya and Bengaluru (Seshadripuram), intends to sell the unit situated at Hiriya along with all its fixed assets namely land, building, plant & machinery etc., current assets namely stock & trade receivables etc., and liabilities namely Bank term loans, bank working capital loans, creditors for supplies etc., for a lump sum consideration.

3. The applicant has sought Advance Ruling on the following questions / issues:

1. "Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?"
2. "Whether the transaction would cover under sl.no.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?"

Both the aforementioned questions are covered under Section 97(2)(g) and 97(2)(b) of the CGST Act, 2017, respectively. The Application is , therefore, admitted.

PERSONAL HEARING PROCEEDINGS HELD ON 09.01.2018.

4. Sri S. Vishnu Murthy, Chartered Accountant and the authorised representative of the Applicant appeared and presented the case as follows :-

- a. That the unit in question, which is intended to be sold, is an independent one and is involved in the manufacture of animal feeds.

- b. This unit has fixed assets in the form of land, building, plant and machinery and current assets in the form of inventory and receivables. It has also availed term loans from the bank for the purpose of setting up of the unit and working capital loans availed from the banks for meeting the working capital requirements. The unit has also liabilities in the form of sundry creditors and certain outstanding liabilities.
- c. The proposed transaction of sale of unit as a whole involves transferring of all the assets to the purchaser and also taking over of all the liabilities by the purchaser.

FINDINGS & DISCUSSION:

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri S. Vishnu Murthy, Chartered Accountant, the authorised representative of the applicant, during the personal hearing. We also considered the questions / issues on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions / issues raised, the applicant's understanding / interpretation of law in respect of the issue.

6. The Applicant has sought advance ruling on two questions i.e (1) Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?" and (2) "Whether the transaction would cover under sl.no.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?"

7. The first question before the Authority to decide is whether the aforesaid transaction would amount to supply of goods or supply of services or supply of goods and services.

7.1 The Applicant has stated at Serial number 15 of their application that they intend to sell one of their animal feed manufacturing units operational since 1990. Further it has been contended that this unit besides having fixed assets in the form of land, building, plant and machinery has current assets like receivables, inventory etc. Further the said unit is stated to have term loans availed from the banks for setting up of the unit and also working loans for working capital requirements. Furthermore the unit has sundry creditors as well as outstanding liabilities. It has been summarised that the transaction envisages the transfer of all assets to the buyer and the buyer shall also take over all the liabilities.

7.2 The aforesaid statement of facts conveys that the unit sought to be sold is a fully functional unit and the transaction contemplates the transfer of the entire business to a new person, who would not only enjoy a right over the assets but shall also take over the liabilities. It thus postulates that there will be a continuity of business. As the unit is said to be functional and is desired to be transferred as a whole to a new owner it amounts to transfer of a going concern as a whole.

7.3 In the backdrop of the aforementioned facts of the case it now needs to be determined whether the transaction amounts to supply of goods or supply of services or supply of both goods and services.

7.3.1 Section 7 of the CGST Act, 2017 defines the Scope of Supply. Section 7(1) provides that 'Supply' includes activities such as sale, transfer, barter, exchange etc made for a consideration in the course or furtherance of business. This implies that the activity undertaken shall be an action which takes place in the course of regular conduct of business, such as sale or it should have the effect of furtherance of the business. Therefore the activity to be called as supply should be such that undertaking that activity shall amount to conduct of business or enhancing the business. The transfer of a going concern, either as a whole or an independent part thereof, for a lump sum consideration does not constitute an activity taking place in the course of business or for furtherance of business. However since the word 'includes' has been used in Section 7(1) the scope of supply goes beyond the meaning of the expression 'in the course or furtherance of business'. Therefore in the case of the transfer of a going concern even if the act of transfer does not constitute an activity carried out in the course of regular business or for furtherance of business, the activity may still qualify to be termed as a supply.

7.3.2 Section 7(1) (d) stipulates that activities referred to in Schedule II shall be treated as supply of goods or supply of services. In Schedule II the entry at serial number 4 refers to 'Transfer of business assets'. Transfer of business assets is considered as supply of goods. The transfer of business assets implies that a part of the assets are transferred and not the whole business. It is the applicants case that the entire business is proposed to be transferred, where all assets and liabilities will be transferred to the new owner and business would have continuity, regularity and permanency. Thus an entire ongoing activity will get transferred, which would include assets of the business, the stock in trade, cash in hand as also the liabilities attached to the business. Further in part 4(c) of Schedule II it is provided that when the business is transferred as a going concern then it does not

amount to supply of goods. It, therefore, becomes clear that such transfer of business does not constitute a supply of goods.

7.3.3 Activities which constitute supply of services are also described in Schedule II. However the transaction involving the transfer of a going concern is not covered under this Schedule.

7.3.4 This analysis further brings us to the Notification, No. 12/2017-Central Tax (Rate) dated 28th June 2017. Column number 3 of the Table in the said Notification gives the description of the services. Serial number 2 of the Notification provides for 'Services by way of transfer of a going concern, as a whole or an independent part thereof'. This indicates that the activity of transfer of a going concern constitutes a supply of service. The Notification further provides 'Nil' rate of tax on such a supply.

On the basis of the aforementioned analysis we conclude that the transfer of a going concern constitutes a supply of service.

8. The second question for which a Ruling has been sought is whether the transaction would cover under sl.no.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?

8.1 The notification itself speaks that the activity of transfer of a going concern, as a whole or independent part thereof, is exempt from payment of so much Central Tax leviable under sub-section (1) of section (9) of the CGST Act, 2017. The essential condition in-built in the Notification is that the transaction should involve a going concern only. The applicant has only asserted and not proved or shown conclusively that the transaction involves a going concern.

9. A going concern is a concept of accounting and applies to the business of the company as a whole. Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of business as a whole will comprise comprehensive transfer of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. In the instant case, the Applicant has not furnished any documentary evidence to establish that the Applicant is a going concern except their admission that its an ongoing business and the transaction proposes to transfer all the assets and liabilities to the new owner. It implies that the business will continue in the new hands with regularity and a nature of permanency.

10. In view of the foregoing, we Rule as follows:

RULING

1. The transaction of transfer of business as a whole of one of the units of the Applicant in the nature of a going concern amounts to supply of service.
2. The transaction of transfer of one of the units of the Applicant as a going concern is covered under Sl.No.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 subject to the condition that the unit is a going concern.


23-04-2018


(Harish Dharnia)

MEMBER

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009

Date : 23.04.2018



(Dr.Ravi Prasad.M.P.)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Central Tax, Bangalore North West Commissionerate,
Bangalore (Attn : Dy. / Asst. Commissioner, Division2 / B Range)

The Commissioner of Commercial Taxes, Karnataka, Bangalore

The Asst. Commissioner, LVO-130, Bengaluru-22.

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