THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG / 63 / 2021
Dated : 08-11-2021

Present:

1. Dr.M.P. Ravi Prasad
   Additional Commissioner of Commercial Taxes . . . . Member (State)

2. Sri. T. Kiran Reddy
   Joint Commissioner of Customs & Indirect Taxes . . . .Member (Central)

1.	Name and address of the applicant	M/s. GEW (INDIA) PVT. LTD., Unit No.419A, Plot No.D-6, 4th, Wave Silver Tower, Sector 18, NOIDA, Gautam Buddha Nagar, Uttar Pradesh – 201 301. **Reg. Corporate Office** : G 301 to 305, Magapatta Mega Centre, Pune, Maharashtra – 411 028.
2.	GSTIN or User ID	--Unregistered Person— User Id : **29210000297ARS**
3.	Date of filing of Form GST ARA-01	06-09-2021
4.	Represented by	Sri. Veerender Kumar Bhandari, GSTP and Duly Authorised Representative
5.	Jurisdictional Authority – Centre	--Not Applicable--
6.	Jurisdictional Authority – State	--Not Applicable--
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under KGST Act & Rs.5,000/- under CGST Act vide CIN IOBA21092900030409 dated 04.09.2021.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98(4) OF THE KGST ACT, 2017

M/s. GEW (India) Pvt. Ltd.,(herein after referred to as 'The Applicant') Unit No.419A, Plot No.D-6, 4th, Wave Silver Tower, Sector 18, NOIDA, Gautam Buddha Nagar, Uttar Pradesh – 201 301, having registered corporate office at G 301 to 305, Magapatta Mega Centre, Pune, Maharashtra – 411 028. An unregistered person

have filed an application for Advance Ruling, vide user id 292100000297ARS, under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.

2. The Applicant is a company, got a sub-contract work from M/s L&T, claimed to be a works contract, for erecting steel structure casted and bolted on ground in the civil foundation, at the site at Karwar, Karnataka. The scope of the contract involves (i) Procurement of structural steel from approved suppliers such as SAIL/JSPL/Tata (ii) Fabrication at GEW India factory premises, at NOIDA, as per the drawings (iii) Transportation of material and (iv) erection at Karvar site.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

3.1(a) When goods which requires movement from a different place to the work sites forming part of works contract

and should we use or mention SAC as against HSN code in the accompanying Tax Invoice for the goods being moved? For the reason work order issued by main contractor in the name of a subcontractor mentioning only SAC for the reason the whole contract is classified as services by the main contractor

and if SAC is used in tax invoice it might not be same in e-way bill for the goods which are carried in transport vehicle as there shall be HSN code and not SAC.

(b) To corroborate the description as mentioned in the work order irrespective of description of goods being carried or actually transported before installation or erection is done at works site which eventually shall end up to a immovable property liable to get taxed at the applicable rate for such contract classified as services specified in the notification 11/2017-Central Tax (Rate) vis a vis 8/2017-Integrated Tax dated 28.06.2017 read with work order which might be more or less than the goods being transported, in such situation what should we classify for such goods on transportation? How do we mention SAC as against HSN? and to levy the tax rate as applicable to works contract while issuing tax invoice when only the goods are billed for recovering money towards supply of goods as per work order which are part and parcel of the principal supply when it is categorised as service.

3.2 Whether the company is required to be registered in the state of Karnataka for executing the works contract? Nevertheless work/purchase order being received from L&T (main contractor) on our NOIDA GSTIN ordering us to be bill them on their (L&T's) Karnataka GSTIN ?

3.3(a) If the answer to the above question no.2 is in negative we mean interstate works contract are allowed than should it be registered as a regular dealer or as an Input Service Distributor to distribute the input tax credits relating to

services to the actual recipient of services being our NOIDA GSTIN office in the manner as provided under Section 20(2)(c) of CGST Act for having received the tax invoices on Karnataka GSTIN if we register in Karnataka issued by local labourers or contractors registered in Karnataka for having supplied the services at Karwar by levying CGST and SGST to the applicant treating it to be intra state supply to comply Section 8 read with Section 12(3) of the IGST Act.

(b) If the answer to the above question 3(a) is affirmed as either this or that we mean registering as regular or ISD we seek your opinion as to distribute the input tax credit by cross charging the input tax being received from supplier of services by obtaining regular registration which otherwise NOIDA office bearing GSTIN with the same PAN are the actual recipient of services who are actually the supplier of services to L&T as per the work order # EL573WOD1000105 dated 23.06.2021 rather than taking an ISD registration.

4. **Admissibility of the application:** The applicant, through three questions, at column 13 of the application, sought advance ruling in respect of the issues i.e. (i) classification of services and (iv) whether the applicant is required to be registered and hence the application is admissible under Section 97(2)(a) & (f) of the CGST Act 2017 respectively.

5. **BRIEF FACTS OF THE CASE**: The applicant furnishes the following facts relevant to the issue:

5.1 The applicant received a work order from L & T (Larsen & Toubro) to execute the works contract at Karwar job address LE200893-Seabird package MWC04-Larsen & Toubro Ltd., Inside Naval base, Karwar, Near Manzil Creek, Chendia PO, Uttara Kannada district, Karwar, Karnataka-581308 vide the work order ##L573WOD1000106 dated 21-06-2021.

5.2 The aforesaid supply is in the nature of composite supply of goods and services involving supply, erection and installation of steel after fabrication used for harboring/anchoring of ships and classified as service under SAC 995416.

5.3 The entire structure is of steel and casted & bolted on ground in the civil foundation. The scope of the said supply involves (i) Procurement of structural steel from approved suppliers such as SAIL/JSPL/Tata (ii) Fabrication at GEW India factory premises, at NOIDA, as per the drawings (iii) Transportation of material and (iv) erection at Karwar site.

5.4 The steel structure required as raw material is Rectangular Hollow Section and Circular Hollow Section and the fabrication of the same is done at the Noida workshop of the applicant utilizing their profile pipe cutting machine and fit up, welding and other processes carried out in Noida. The applicant deploy either erection contractors or utilizing their departmental labour to carry out the erection work at the site. Major crane is required for the said erection of the structure.

5.5 L&T ordered the applicant, in the work order, to bill or issue invoice from the Noida premises of the applicant having GSTIN 09AAGCG6830R1ZV to their premises in Karnataka having GSTIN 29AAACL0140P3ZD.

5.6 L&T informed the applicant to bill them and levy IGST @ 12% in all the invoices irrespective of that being supply of goods or services or both based on RA bills since it is classified as services under SAC 995416.

5.7 The applicant engages & utilizes the services of registered dealers in the state of Karnataka for installation of steel fabricators in completing the works contract at any stage of work as and when needed and the dealers in Karnataka shall levy CGST and KGST in relation to work carried for immovable property as per Section 12(3) of the IGST Act 2017.

5.8 The applicant also hires the cranes and other equipment, in carrying the works contract at Karwar, from the dealers in the state of Karnataka who shall charge CGST and KGST on the basis of intra state supply, under Section 12(3) of the IGST Act 2017.

6. **Applicant's Interpretation of Law**:

6.1 The applicant, with regard to the first question, submits their understanding / interpretation of law as under:

The applicant is a sub-contractor to M/s Larsen & Toubro, for the work to be executed at Karwar at the place where the immovable property is situated. The applicant for the said purpose fabricating the required steel structure at their premises at Noida and transport the same to Karwar for installation.

The applicant further submits that, as per the work order, they have to raise invoices in the name of L&T, charging IGST @ 12%, classifying under SC 995416 on availing concessional rate of tax, in terms of Notification N0.11/2017-Central Tax (Rate) dated 28.06.2017 vis a vis Notification No.8/2017-IGST (Rate) dated 28.06.2017 as amended, which may be disputed by the check post authorities for an incorrect classification & incorrect rate of tax and may become the subject matter of dispute on road and accordingly the vehicles may be intercepted and may end up in litigation.

The applicant, quoting above, requested for ruling to accommodate the movement in supply of goods before installation and to charge the rate of tax as applicable to the works contract classified as service and what has to be mentioned in the invoice whether SAC or HSN.

6.2 The applicant, with regard to the second question submits their understanding / interpretation of law as under:

The applicant, with regard to registration, submits that they raise invoice from their premises at Noida, Uttar Pradesh to L&T, Karnataka and the contracts which are billed from a state different from the state where actual work is performed amount to inter state transaction in terms of Section 7(3) of the IGST Act 2017.

The applicant quoting the provisions of Section 12(3) of the IGST Act 2017 submits that the services in the nature of works contract are covered under Section 12(3) supra and hence the place of supply shall be the location of the immovable property. The applicant further stresses that **since the location of supplier and POS (place of supply) falls in two different states it is obvious that the nature of supply is inter state, attracting IGST rate on such value as for as the composite value of works is concerned.**

The applicant, alternatively, quoting the provisions of Section 22(1) of the CGST Act 2017, with regard to registration, stresses upon the phrase ***"from where he makes a taxable supply of goods or services or both"*** and states that it is very difficult to ascertain from where the taxable services are supplied when there exists a definition and a specific section under the IGST Act 2017 to determine the place of supply for concluding nature of supply.

The applicant raises the question as to whether the inter-State supply or intra-State supply as narrated & defined in Section 7 and 8 if the IGST Act 2017 determines the phrase ***"from where he makes a taxable supply of goods or services or both"*** or the Place of Supply under Section 12 of the IGST Act 2017 so as to conclude the state where the applicant needs to take registration. Further whether Section 22 of the CGST Act 2017 has to take cue from IGST Act or should it be read independently.

The applicant further raises the question as to whether the phrase ***"from where he makes a taxable supply of goods or services or both",*** mentioned in Section 22 of the CGST Act 2017, needs to be considered in terms of Section 12 of the IGST Act 2017, specifically when the outward supply is of the services, as the place where the actual services are performed and hence they register in that state of Karnataka or else they can provide the services from different state (UP) and bill from that state (UP) where they are actually registered which is other than the place where the actual services are provided.

The applicant, in view of the above, states that the goods are produced and the services are performed; there is a time lag between production and consumption of goods where as production and consumption of services occur simultaneously and submits their view that Section 22 of the CGST Act 2017 read with KGST Act 2017 demands registration, for a person in relation to immovable property services, to obtain from where he is executing and delivering rather than the place where he is registered in

some other state or UT. Further we are not able to buy the concept of completing a service at one place and declaring it to be delivered from another place, especially an immovable property related services just because the work order was issued on another state where the service provider is registered or having a place of business.

The applicant, in view of the above, requests to enlighten them on the actual scenario on what line the GST Act was implemented and the consequences if a person fails to register in the state in which he executes the works contract as for as the revenue loss to the concerned state is concerned if GST Laws are destination based consumption tax, even though there is an exception to this in terms of Section 10(1)(b) of the IGST Act.

6.3 The applicant, with regard to the third question submits their understanding / interpretation of law as under:

The applicant with regard to the third question states that they may employ or delegate the work by way of subcontract in Karnataka to various contractors to complete the work at the works site in Karwar, Karnataka and in such case they are of the view that the sub-contractors may raise the bills to them locally by treating their supplies to be intra state supply and levy CGST & KGST, on the registered office of the applicant at Noida, as the said sub contract work orders may be issued from the said premises. In such a situation the tax component becomes cost to the applicant and the ITC of such tax component becomes ineligible as the same may not be appearing in GSTR-2A portal and they may not be eligible to utilize the said ITC.

The applicant, in view of the above, are of the opinion that they have to obtain ISD registration in Karnataka, for receiving the services on behalf of their Noida registration and transfer or distribute the credit in terms of Section 20(3)(c) of the CGST Act 2017 read with relevant rules under the CGST Rules 2017 or else they have to obtain regular registration u/s 25 of the CGST Act 2017.

PERSONAL HEARING: / PROCEEDINGS HELD ON 07.10.2021

7 Sri Veerendra Kumar Bhandari, GSTP & Authorised Representative of the applicant appeared for personal hearing proceedings held on 07.10.2021 and reiterated the facts narrated in their application. The authorized representative were asked to furnish written submission with regard to the question that (i) who owns the goods, supplied by the applicant to the work site at Karwar, to M/s L&T, when such goods are not installed at the site at Karwar and (ii) whether the applicant are planning to have an establishment or office in Karnataka.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia 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 dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant, a sub-contractor, having GST registration at Noida, Uttar Pradesh got a work order from M/s L&T, Karnataka for erection and installation of a steel structure, after fabrication of the same at their Noida premises, which is to be casted and bolted on the ground in the civil foundation. The applicant in this regard sought advance ruling in respect of the questions mentioned at para 3 supra.

11. The applicant though sought advance ruling in respect of three questions. We proceed to consider one question at a time and discuss. The first question is with regard to the HSN or SAC that need to be mentioned while transporting the steel structures fabricated at their Noida premises, to the work site at Karwar, as the L&T (main contractor) has directed them to mention SAC 995416, on consideration that the work awarded is in the nature of works contract service and is a composite supply. The applicant raised the question claiming to be covered under Section 97(2)(a) of the CGST Act 2017, which is related to classification of goods or services or both.

11.1 In this regard a question was raised during hearing that held on 07.10.2021 that "in case the goods are supplied as part of the contract and for any reasons if the erection & installation of the said goods does not happen, who will be the owner of the said goods." The applicant, through their authorised representative vide letter dated 11.10.2021, answered that the situation arising out of this question is not foreseen in the work order and hence in such case the Indian Contract Act has to be referred to counter the situation. However Sl.No.11 of the work order, which deals with quantitative payment terms for material and fabrication, specifies that 85% the contract value shall be paid on receipt of the material at the site on prorate basis and rest on erection and retention. Therefore once the invoice is issued along with transportation of goods the title is passed to L&T and accordingly payment is released. Thus we the applicant are the owners of the goods till the payment is not made by L&T and transferring of ownership completes only when the payment is made by L&T and mere invoicing in their name does not make them owner of the goods.

11.2 The discretion of invoicing is left to us and is mainly based on the work order. To defer the invoicing & mere transferring of goods on Delivery

Challan is subjective matter and the discretion is left to us subject to the time limitation prescribed under the GST Act for invoicing. If our client (L&T) has agreed to pay us for the goods being supplied which needs to be fabricated and erected we would always like to supply such goods on raising of invoice rather than on delivery challan which makes no meaning either to us nor to Government as they can realize the taxes for the month in which the invoice is raised if ownership is passed.

11.3 In the instant case the applicant is neither seeks the classification of goods nor services but seeks whether the HSN or SAC that need to be mentioned in the invoice. Thus the question is not covered under the issues mention in Section 97(2) of the CGST Act 2017. In view of the foregoing the authority refrain from answering this question at it is not within the jurisdiction of this authority.

11.4 However, it is pertinent to note that the invoice is issued for the supply of goods or services or both and when it is mandated to mention the HSN in the invoice, the HSN covering the transaction, in this case the supply of services, needs to be mentioned. But in case of e-waybill, the movement is of goods and hence the delivery note causing the movement of goods needs to be raised and the HSN of the goods moved and the value of such goods moved needs to be recorded in such e-waybill.

12. The second question, in respect of which the applicant sought advance ruling, is whether the applicant is required to be registered in the state of Karnataka for execution of the work order which was issued by M/s L&T, Karnataka, on the applicant's premises registered at Noida, UP, from where the applicant raises the invoice.

12.1 In this regard a question was raised during hearing that "whether the applicant is planning to have an office in Karnataka". The applicant answered that they would like to have a house for stay purposes, which can be for their resident engineer or any other person who shall commute from any place within India to visit the work site for many purposes. The applicant stated that they shall not maintain books nor documents at such place nor prepare invoices from Karnataka, it will be purely kept at Noida office. Even otherwise also if they wish to take a registration from Karnataka, they still shall mention the address of Karnataka only for billing and all documents & books of accounts shall be preserved at Noida office, as they will not have any administrative staff nor accounting persons for the project at Karwar except the engineers and other persons who shall look into the project work only.

12.2 Further the applicant quoting the definitions of "place of business" and "fixed establishment" stated that if Section 22 of CGST Act 2017 needs to be taken cognizance for deciding as to a person is required to register or not then definition of fixed establishment is exclusively defined for supply

of services which recognizes a permanence and suitable structure in terms of human and technical resources to supply services and that they are just having an office for accommodating their staff or any other persons including directors in connection with the business being undertaken and no way such accommodation shall be meant for accounting, book keeping or preserving documents in connection with the work being undertaken at Karwar, Karnataka.

12.3 In this regard we invite reference to Section 22 of the CGST Act 2017, which governs the issue of registration. Section 22(1) of the said Act stipulates that "*Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees'.* Therefore, every supplier is liable to be registered in the State or Union territory from where such supplier makes taxable supply of goods or services or both. In the instant case, the applicant is registered in the state of Uttar Pradesh and has the principal place of business at Noida.

13. Section 2(71) of the CGST Act 2017 determines the location of the supplier of services to mean as under-

a. *where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*

b. *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*

c. *where a supply is made from more than one establishment, where the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and*

d. *in absence of such places, the location of the usual place of residence of the supplier;*

In the instant case, the applicant has obtained registration for the premises located at Noida, UP and hence the location of the supplier of services is the place of business of the applicant. It is also pertinent to note that the applicant has no fixed establishment in the State of Karnataka as on date.

14. Section 12 of the IGST Act 2017 determines the place of supply and specifically Section 12(3) of the IGST Act is relevant to the impugned transaction & determines the place of supply of services directly in relation to immovable property in respect of any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work or any ancillary services shall be the location at which the immovable property is located or intended to be located and if the location of the immovable property is located or

intended to be located outside India, the place of supply shall be the location of the recipient. Thus, in the instant case, the place of supply of services is the location at which the immovable property is located i.e. Karwar in Karnataka state.

15. Section 7(3) of the IGST Act 2017, which is appended below, determines the impugned transaction, claimed to be a supply of services, as a supply of services in the course of inter-state trade or commerce as the location of the supplier and the place of supply are in two different states.

> *3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in*
>
> *(a) two different States*
>
> *(b) two different Union territories; or*
>
> *(c) a State and a Union territory*
>
> *shall be treated as a supply of services in the course of inter-State trade or commerce.*

16. In the instant case, the applicant has only one principal place of business (Noida, UP) for which registration has been obtained and does not/intended to have any other fixed establishment other than the principal place of business, as admitted by the applicant. Therefore the location of the supplier itself is the principal place of business which is in Noida, Uttar Pradesh. Thus, there is no requirement for a separate registration in Karnataka for execution of the contract referred supra. It is pertinent to mention here that the place of supply is useful only to determine the nature of supply and also to decide the component/s of the tax (CGST & SGST or IGST) that need to be charged, as the GST is the tax based on destination and consumption. In view of the above, the nature of supply is of inter-State supply and the applicant can supply the impugned services from the place of registration i.e. Noida, UP on raising the invoice from the said place by charging IGST.

17. The third question is whether the applicant obtain the ISD registration, avail the ITC of the tax paid on the services procured from the suppliers in Karnataka at the site i.e. Karwar, Karnataka and distribute the same to their registration at Noida, UP. In this regard we invite reference to Section 2(61) of the CGST Act 2017, wherein the Input Service Distributor has been defined to mean

> *(61) "Input Service Distributor:" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;*

18. Section 24 of the CGST Act 2017 deals with compulsory registration in certain cases and stipulates, under sub-section (viii), that "Notwithstanding anything contained in section 22(1) of the CGST Act 2017, the Input Service Distributor, whether or not separately registered under the CGST Act, shall be required to be registered under the CGST Act 2017. Further Section 25 of the Act prescribes certain procedure for registration and specifically sub-section (1) stipulates that "*Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed*".

19. It could be seen from the definition under Section 2(61) of the CGST Act that the Input Service Distributor is an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit (ITC). Thus, to distribute the ITC, the supplier should obtain the Input Service Distributor registration for the premises from where they intend to distribute the credit. It is an admitted fact that the applicant neither have nor intend to have any establishment at the site at Karwar, Karnataka and hence cannot obtain the ISD registration.

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

RULING

(i) This authority refrains from giving any ruling in respect of the question that whether HSN or SAC that need to be mentioned in the invoice raised by the applicant from their registered office at Noida, UP, as the said question is beyond the jurisdiction of this authority, in terms of Section 97(2) of the CGST Act 2017.

(ii) The applicant need not obtain separate registration in Karnataka, for supply of services and can raise the invoice by charging IGST from their registered office at Noida, UP, with place of supply as Karnataka.

(iii) Since the applicant are neither having nor intending to have any establishment at the site at Karwar, Karnataka, they cannot obtain ISD registration for the site at which they are delivering service.

(Dr. M.P. Ravi Prasad)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(T. Kiran Reddy)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place : Bengaluru,
Date : 08-11-2021

#: GEW(India)

To,

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 Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-45, Bengaluru.
5. Office Folder.