

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

Advance Ruling No. KAR ADRG 44 /2021

Dated : 30-07-2021

Present:

1. Dr.M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri.Mashhood Ur Rehman Farooqui,
Joint Commissioner of Customs & Indirect Taxes. . . .Member (Central)

1.	Name and address of the Applicant	M/s. Goodwill Auto's, H No 118, Adarshnagar, Hubbali, Dharwad-580032.
2.	GSTIN or User ID	29AALFG7985M1ZA
3.	Date of filing of Form GST ARA-01	29-03-2021
4.	Represented by	Sri Shankar Y Basangoudar ,Partner
5	Jurisdictional Authority - Centre	The Commissioner of Customs & Indirect Taxes, Belagavi GST Commissionerate
6	Jurisdictional Authority - State	Asst. Commissioner of Commercial taxes, LGSTO-325, Hubbali
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under KGST Act vide ARN reference number IP2902210006364 dated 23.02.2021 & fee of Rs 5,000 under CGST Act vide CIN No. SBIN21032900378594dated 23-03-2021

**ORDER UNDER SECTION 98(4) OF CGST ACT, 2017
AND UNDER SECTION 98(4) OF KGST ACT, 2017**

M/s. Goodwill Auto's, H No 118, Adarshnagar, Hubbali, Dharwad-580032 having GSTIN -29AALFG7985M1ZA, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of the CGST Rules and Section 97 of the 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 and the KGST Act.

2. The Applicant is a partnership firm registered under the Goods and Services Tax Act, 2017 and engaged in the business of execution of works contract relating to electrical works and electrical infrastructure.

3. The applicant has sought advance ruling in respect of the following question:

i. GST applicability of cost of the diesel incurred for running DG Set in the course of providing DG Rental Service?

4. **Admissibility of the application:** The question is about "determination of the liability to pay tax on any goods or services or both;" and hence is admissible under Section 97(2)(e) of the CGST Act.

BRIEF FACTS OF THE CASE

5. The applicant furnishes some facts relevant to the issue:

5.1 The Applicant is a partnership firm registered under the Goods and Services Tax Act, 2017 and is engaged in the business of leasing of DG Set to customers like LIC of India, Syndicate Bank, and SBI in various districts of Karnataka.

5.2 Further, the applicant has entered into agreement with Life Insurance Corporation of India (LIC), Branch Office at Koppa, Udupi to install Diesel Generator on hire basis for rent of Rs.10,520-00 per month along with reimbursement of diesel cost at Rs.305-00 per hour on usage of the DG Set.

5.3 The applicant submits that he is discharging tax @ 18% (CGST @ 9% and KGST @ 9%) on DG Set hiring charges and also discharging tax @ 18% (CGST @ 9% and KGST @ 9%) on reimbursement of diesel cost incurred for running DG Set.

5.4 One of the recipient of services, i.e. Life Insurance Corporation of India (LIC) was of the opinion that the taxes collected by the applicant pertaining to the reimbursement of diesel charges for running the Diesel Generator was erroneous as the said commodity diesel does not come under the purview of GST. Since diesel is a non GST goods as per section 9 of the CGST/KGST Act, 2017 the said concern has requested the applicant to reimburse the wrongly collected taxes.

5.5 Subsequently, the applicant submitted that compliance given by the Service tax authorities during Pre GST period dated 01-03-2017 states that as per section 67 of the Finance Act 1994 which was amended vide Bill No 26 of 2019, "consideration" includes

- (i) *any amount that is payable for the taxable services provided or to be provided.*
- (ii) *any reimbursement expenditure or cost incurred charged by the service provider and charged in the course of providing or agreeing to provide a taxable service except in such circumstance and subject to such conditions as may be prescribed:*

Therefore section 67 prescribes for the valuation of the taxable services; it is being prescribed specifically in this section that consideration for a taxable service.

5.6 The applicant contended that the intention is always to include reimbursable expenditure in the value of the taxable service. However, in the case of Intercontinental Consultants and Technocrats Private Limited Vs Union of India, the Court has taken a contrary view, where in, it was held that the reimbursement will not be liable to service tax in the absence of specific provision for valuation under section 67 of the Act.

PERSONAL HEARING / PROCEEDINGS HELD ON 15-04-2021

6. Sri Shankar Y Basangoudar, Partner of the applicant appeared for personal hearing proceedings held on 15-04-2021 & reiterated the facts narrated in their application

FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in *pari-materia* and have the same provisions in like matter 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.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issue involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

9. On verification of the records submitted by the applicant it is observed that he is discharging tax @ 18% (CGST @ 9% and KGST @ 9%) on leasing charges of DG Set provided to the customers and also discharging tax @ 18% (CGST @ 9% and KGST @ 9%) on reimbursement of diesel cost incurred for running DG Set by the recipient of the service. Meanwhile the recipient of the service is objecting to discharge taxes on reimbursement of diesel cost incurred for running DG Set.

10. Coming to the point of question raised by the applicant, as per Section 15(1) of the CGST Act, 2017-

"the value of a 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 for the supply".

11. In the instant case reimbursement of diesel cost incurred for running DG Set by the recipient of service are incidental expenses and is a part of the consideration as per section 2(31) of the CGST/KGST Act, as *"consideration" in relation to the supply of goods or services or both includes-*



(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

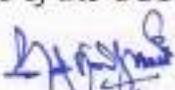
Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

12. The contract entered between the applicant and the recipient is for the hiring of DG Set and is a comprehensive contract with the consideration having a fixed component and a variable component. The fixed component is the monthly fixed rent charged in the invoice for the DG Set and the variable charge is the charge for the diesel used. Both are part of the same consideration and is for the contract of supplying DG Set on hire. Though it appears that the applicant is receiving the reimbursement of diesel cost, the recipient is not paying for the diesel but for the services of DG Set, which is an integral part of the supply of DG Set rental service. There is no separate contract for supply of diesel and the invoice issued for the reimbursement of diesel cost is nothing but a supplementary invoice issued for the supply of rental service of DG Set. Hence, consideration for reimbursement of expenses as cost of the diesel for running of the DG Set is nothing but the additional consideration for the renting of DG Set and attracts CGST @ 9% and KGST @ 9%.

13. In view of the foregoing, we rule as follows

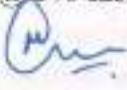
R U L I N G

The cost of the diesel incurred for running DG Set in the course of providing DG Rental Service is nothing but additional consideration for the supply of DG Set on rent as per section 15 of the CGST/KGST Act and hence attracts CGST @ 9% and KGST @ 9%.


(Dr. M.P. Ravi Prasad)

MEMBER
Karnataka Advance Ruling Authority
Place : Bengaluru - 560 009

Date : 30-07-2021


(Mashhood Ur Rehman Farooqui)

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

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 Commissioner of Customs & Indirect Taxes, Belagavi GST Commissionerate.
4. The Asst. Commissioner of Commercial taxes, LGSTO-325, Hubballi.
5. Office Folder.

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