

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

Advance Ruling No. KAR ADRG 39/ 2022

Dated: 27.10.2022

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. Kiran Reddy T
Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. SREE SUBHA SALES, No.1150, 3 rd Floor, 13 th Cross Road, 1 st Stage, 1 st Phase, Behind Siddaganga Public School, Chandralayout, Bengaluru-560 072.
2.	GSTIN or User ID	29ADDFS9427R1Z1
3.	Date of filing of Form GST ARA-01	25-05-2022
4.	Represented by	Ms. Vaishnavi, Administration Employee
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Bengaluru West GST Commissionerate, West Division-07, Range-EWD7 Bengaluru.
6.	Jurisdictional Authority - State	ACCT, LGSTO-070, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2905220044724 Dated 11.05.2022

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

M/s. Sree Subha Sales, (hereinafter referred to as 'The applicant'), No.1150, 3rd Floor, 13th Cross Road, 1st Stage, 1st Phase, Behind Siddaganga Public School, Chandra layout, Bangalore-560072 having GSTIN 29ADDFS9427R1Z1 have filed an application for Advance Ruling 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 and the KGST Act.

2. The Applicant is a Partnership concern registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The Applicant states that they execute government projects on tender basis and their main area of expertise is water supply and underground drainage works. The Applicant has been awarded contract for establishment of 1 x 12.5 MVA, 66/11kV Sub-station at B.V. Halli in Channapatna taluk, from Karnataka Power Transmission Corporation Limited (KPTCL for brevity).

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

- i. *Applicability of GST for reimbursement of tree cut compensation and land compensation amount paid to farmers and land owners during the course of execution of work.*

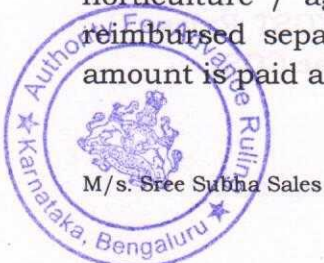
4. Admissibility of the application: The question is about the “determination of the liability to pay tax on any goods or services or both” and hence is admissible under Section 97(2)(e) of the CGST Act 2017.

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

5.1 The applicant states that they have been awarded contract for establishment of 1 x 12.5 MVA, 66/11kV Sub-station at B.V. Halli in Channapatna taluk, Ramanagara District and construction of 66kV SC tap line on DC towers for a distance of 18.4 kms from 66kV T.K. Halli-Harohalli SC line to the proposed 66/11 kV B.V. Halli Sub-station on partial turnkey basis including supply of all matching materials / equipments (excluding 11 kV switchgear) and erection (including civil works) of all from Karnataka Power Transmission Corporation Limited.

5.2 The applicant states that as per the agreement entered between them and KPTCL, the work order amount does not include the compensation amount paid to farmers. It is being paid as mere reimbursement. Applicant states that regarding this they have obtained clarification from the finance advisor of KPTCL that, this transaction does not attract GST.

5.3 The applicant states that the amount is being paid as compensation to the affected as per detailed work award Section V, clause 1.4 of special conditions of contract. Tree cutting, tree cut compensation, crop compensation would be arranged to be paid by the contractor. The owner shall render necessary help for fixing the compensation through horticulture / agriculture department. The compensation charges so paid shall be reimbursed separately by the owner as per actuals. Accordingly the compensation amount is paid and reimbursement as per actuals is received from KPTCL.



PERSONAL HEARING / PROCEEDINGS HELD ON 22-06-2022

6. Ms. Vaishnavi, Administration Employee and Duly Authorised Representative appeared for personal hearing proceedings held on 22.06.2022 and 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 the KGST 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. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts and the submissions made by their authorized representative during the time of hearing.

9. The Applicant states that they execute government projects on tender basis and their main area of expertise is water supply and underground drainage works. The Applicant has been awarded contract for establishment of 1 x 12.5 MVA, 66/11kV Sub-station at B.V. Halli in Channapatna taluk, from Karnataka Power Transmission Corporation Limited (KPTCL for brevity). The Applicant wants to know the applicability of GST for reimbursement of tree cut compensation and land compensation amount paid to farmers and land owners during the course of execution of the work.

10. The Applicant states that reimbursement bills are raised to KPTCL by them for the compensation amount paid to farmers /land owners during execution of the project. The Applicant states that this compensation amount is not included in the contract amount (work order amount) and cheques are issued to beneficiary based on calculation and rates set forth by KPTCL in consultation with respective departments. On issue of these cheques and on realization of the amount in the beneficiary's account, the applicant raises a bill to KPTCL with necessary proofs and documents for reimbursement of the same.

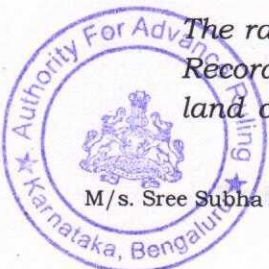
11. The Applicant has also submitted brief note on the various compensations paid on behalf of KPTCL by them to the beneficiaries and the same is as below.

A) Land Compensation- There are two types of land compensation being paid for which reimbursement is claimed

a) Tower foot/ Tower foundation compensation.

b) Regular land compensation.

The rates for these compensations are set by DDLR (Deputy Director Land Records) based on the order passed by the district magistrate. Regular land compensation is paid to any land owner on top of whose land, the



express feeder line passes and any land within 9 meter vicinity on either side from the feeder line.

For laying of the Express feeder, the place for casting a pole is decided by KPTCL based on various technical parameters. In such location, they have to cast 4 tower foots for erection of the pole. These land owners qualify for the tower foundation / tower foot land compensation which has higher rates set by DDLR when compared to regular land compensation.

B) Crop Compensation- There is compensation paid to farmers, where it is inevitable to cut down crops during the course of execution of the project.

C) Tree Cut Compensation- While laying the express feeder line, as per the norms there should not be any structures in the 9 meter vicinity on either side of the line including trees. Hence any tree cut down in due course qualifies the land owner to receive compensation from government. The rates for the compensation are decided by the horticulture or forest department, depending on the tree which is cut. Hence Tree Cut compensation reimbursement bills are raised.

12. The Applicant states that as per section V – Special conditions of contract, tree cutting, tree cut compensation, crop compensation would be paid by the contractor and then the same is reimbursed by the owner as per actuals.

13. Now we proceed to examine whether the applicant qualifies to be a pure agent. In this regard we invite reference to rule 33 of CGST Rules 2017, which is reproduced below:

Rule 33. Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who-



(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

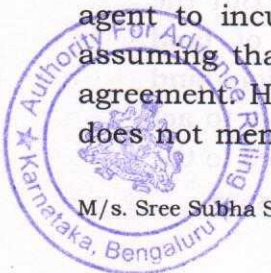
(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

14. It could be seen from the above that a pure agent would be a person (supplier i.e. applicant in this case) who enters into a contractual agreement with the recipient of supply (KPTCL in this case) to act as recipient's pure agent to incur expenditure or costs, in the course of supply of goods or services or both. It is an admitted fact that the applicant herein is raising reimbursement bill for the compensation (tree cut compensation/ crop compensation) paid to farmers once the cheques issued by the applicant to the farmers are realized in the bank. Now we proceed to examine whether the applicant falls into the category of 'Pure Agent' as per the explanation given under Rule 33 of CGST Rules 2017 mentioned supra.

15.1 The Applicant has emailed word document which states 'Special Conditions of Contract', but the same is not signed by any. However in the main contract agreement, in para 2.0 which lists the contract documents, includes this 'special conditions of contract' under contract documents. The Applicant in their email dated 12.10.2022, has stated that Special conditions of Contract is not signed at the time of concluding the agreement but, these documents along with drawings and other sections are uploaded in the e-procurement portal at the time when tender is called for and these documents and drawings even though are not signed at the time of agreement are binding on them. Para 1.4 of the 'Special Conditions of Contract' is reproduced below:

1.4 Tree cutting and tree cut compensation, crop compensation, electrical inspectorate charges would be organized to be paid by the contractor. The Owner shall render necessary help for fixing the compensation through horticulture / agriculture department. The compensation / charges so paid by the Contractor shall be reimbursed separately by the owner as per actuals.

15.2 This document can be considered as the agreement with KPTCL to act as his pure agent to incur expenditure or costs in the course of supply of goods or services, assuming that, this document (Special conditions of Contract) is a part of the main agreement. However, the above mentioned para 1.4 of 'Special Conditions of Contract' does not mention anything about land compensation. Thus the first condition to be a



pure agent is satisfied only to the extent of Tree cut compensation and crop compensation.

16. The Applicant states that land compensation is paid to the land owner on whose land the express feeder line passes and to any land within 9 meter vicinity on either side of the express feeder line since there should not be any trees, plants or structures within the 9 meter vicinity of the express feeder line as per norms. Where it is inevitable to cut the crops and trees during the course of execution of project, crop compensation and tree cut compensation is paid to the farmers. Thus the farmers or land owners are paid compensation either for cutting the trees or crops grown in their land or for not growing any trees or crops or to build any structures below the express feeder line. This is the service supplied by the farmers or land owners to the KPTCL and the same is covered under schedule II of CGST Act 2017 which is reproduced below:

SCHEDULE II

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1.
2.
3.
4.
5. Supply of services

The following shall be treated as supply of services, namely:-

- a)
- b)
- c)
- d)
- e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

Thus the second and third condition to be a pure agent is satisfied

17. The Applicant states that they pay land compensation, tree cut compensation and crop compensation to farmers or land owners as mentioned supra. The Applicant states that as per section V – Special conditions of contract (para 1.4) mentioned supra, tree cut compensation, crop compensation would be paid by the contractor and then the same is reimbursed by the owner as per actuals. Thus the fourth condition to be a pure agent is satisfied.

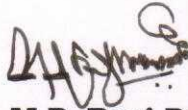
18. Since all the 4 conditions to be a pure agent are satisfied, the Applicant is acting as a pure agent only to the extent of reimbursement of tree cut compensation. But the Applicant is not acting as pure agent to the extent of reimbursement of land compensation as para 1.4 of Special conditions of contract does not mention land compensation i.e there is no contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of services to the

extent of land compensation. However, in case if Special conditions of contract is not a part of the main agreement, then Advance Ruling issued in this case does not apply.

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

RULING

Reimbursement of tree cut compensation amount paid to farmers and land owners during the course of execution of work is not chargeable to GST as the Applicant qualifies to be a Pure Agent and Reimbursement of land compensation amount paid to farmers and land owners during the course of execution of work is chargeable to GST as the Applicant does not qualifies to be a Pure Agent



(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority

Place: Bengaluru - 560 009



(Kiran Reddy T)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

Date: 27.10.2022

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 Taxes, Bengaluru West GST Commissionerate, West Division-7, Range EWD-7, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-070, Bengaluru.
5. Office Folder.



M/s. Sree Subha Sales

SAG
INFOTECH