

**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 14/2023

Date : 20-03-2023

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. MARUBENI INDIA PVT. LTD., 02 A 111, WeWork Galaxy, 43, Residency Road, Shanthala Nagar, Ashok Nagar, Bengaluru – 560 025.
2.	GSTIN or User ID	29AAACM6413A3ZV
3.	Date of filing of Form GST ARA-01	07-09-2022
4.	Represented by	Ms. Neha Kishore, C A Ernst & Young LLP, & Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru. (Range-DED1)
6.	Jurisdictional Authority – State	ACCT, LGSTO-21, 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. DC2908220299751 dated 26.08.2022.

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

M/s. Marubeni India Pvt. Ltd., (herein after referred to as 'Applicant'), 02 A 111, WeWork Galaxy, 43, Residency Road, Shanthala Nagar, Ashok Nagar, Bengaluru – 560 025, having GSTIN 29AAACM6413A3ZV, 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, KGST Act.

2. The applicant stated that they are a Private Limited Company registered under the provisions of CGST/KGST Act 2017; they are engaged in trading of finished goods and also in providing support services to customers located outside India; they intend to enter into a new business transaction wherein the applicant would be engaged in supplying domestically procured goods to customers outside India.

3(a). In view of the above, the applicant has sought advance ruling in respect of the following question that "***Whether the supply of goods from the Applicant to the overseas customer is taxable under GST as a zero rated supply or not?***"

3(b) **Admissibility of the application :** The applicant claimed that the question on which advance rulings has been sought is with regard to "Determination of the liability to pay tax on any goods or services or both" which is covered under Sections 97(2)(e) of the CGST Act 2017 and hence the instant application is admissible.

4. BRIEF FACTS OF THE CASE: The applicant furnished the following facts relevant to the issue:

4.1 The applicant is engaged in supply of goods and services to various customers/clients within as well as outside India and also engaged in rendering support services to customers located outside India; the applicant, with respect of to the operations of supply of goods, is engaged in trading of imported as well as domestically procured goods. They are proposing to enter into a new business transaction wherein the applicant would be engaged in supply of domestically procured goods to customers outside India.

4.2 The applicant has been approached by a customer outside India (herein after referred to as 'Overseas Customer') for supply of certain goods which will be domestically procured from vendors located in India. The purchase order for such goods would be issued by the Overseas Customer to the Applicant, who in turn would place a back-to-back order for procurement of the required goods upon domestic manufacturer / vendor (herein after referred to as 'Indian Manufacturer) of the goods.

4.3 The applicant, for ease of business and logistical convenience, would instruct the Indian manufacturer to ship the goods from its location/factory directly to the location of the Overseas Customer and accordingly the goods would be shipped from the Indian Manufacturer's premises to a foreign destination without the goods being physically delivered by the Indian manufacturer to the applicant. The Indian Manufacturer, as part of the contractual arrangement with the Applicant, is responsible for undertaking the applicable Customs Duty



compliances such as documentation for outbound customs clearance as Exporter and filing of Bill of Lading for transportation of goods to the Overseas Customer on the direction of the Applicant.

4.4 To the extent of outbound freight from the port in India to the location of the Overseas Customer, there would be two possible scenarios which are as under:

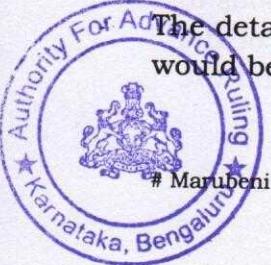
- a) The applicant would be responsible for payment of such Sea/Air freight cost for onward journey to Overseas Customer country's port.
- b) The Indian Manufacturer would be responsible for payment of such Sea/Air freight cost for onward journey to Overseas Customer country's port.

4.5 Two invoices will be raised in the transaction as the transaction will be on principal to principal basis between the Indian Manufacturer and the Applicant and also between the Applicant and the Overseas Customer. One invoice would be raised by the Indian Manufacturer to the Applicant and second invoice would be raised by the Applicant to the Overseas Customer. The consideration for supply of goods from the Applicant would be paid by the Overseas Customer either in advance or subsequent to receipt of the goods, in convertible foreign currency duly supported by Bank Realisation Certificates (BRCs), which will be received in foreign currency account maintained by the Applicant in India. Further, the applicant would remit the payment, towards purchase of goods, to the Indian Manufacturer in foreign currency out of its Foreign Currency Account maintained in India. Alternately, the Overseas Customer will open a Transferable LC in foreign currency in favour of applicant, in which case the applicant would partially transfer the same LC in favour of Indian Manufacturer for the price agreed between the Indian Manufacturer and Applicant and such transactions are permitted for EEFC accounts as allowed by the RBI and FEMA guidelines.

4.6 The transaction between the applicant and the Indian Manufacturer would be recovered, in the books of accounts of the applicant, as 'purchase of goods' transaction and the transaction between the applicant and Overseas Customer would be recorded as 'sale of goods' transaction. The Indian Manufacturer, as per the agreement with the applicant, would be responsible to arrange the logistics till customs port and also for filing the Shipping Bill for export of goods in accordance with provisions of the Customs Act 1965, with the following details.

Particulars	Name
Exporter	Indian Manufacturer
Consignee	Overseas Customer along with complete address of delivery outside India
Buyer	Marubeni India Pvt. Ltd., i.e. the Applicant

The details of the invoice for the supply from Indian Manufacturer to the Applicant would be as under:



Particulars	Name
Supplier	Indian Manufacturer
Billed to	Marubeni India Pvt. Ltd., i.e. the Applicant
Ship to	Overseas Customer along with complete address of delivery outside India

The applicant would be raising the invoice on overseas customer, for supplies made by the applicant with the following details.

Particulars	Name
Supplier	Marubeni India Pvt. Ltd., i.e. the Applicant
Bill to / ship to	Overseas Customer along with complete address of delivery outside India
Ship from	Location of the Indian Manufacturer

4.7 The applicant would hand over the Bill of lading and GST invoice to the overseas customer so as to allow the overseas customer to receive the shipment from overseas customer's country port. The Indian Manufacturer, in the above transaction, would not, at any point, be issuing any invoice to the overseas customer nor be communicating directly / indirectly with the overseas customer.

5. Applicant's Interpretation of Law: The Applicant furnished their interpretation of law *inter alia* stating as under:

5.1 The Applicant raises an invoice for goods being sold to the Overseas Customer. In this regard, as per the provisions of the CGST Act, 2017, IGST Act, 2017 and Karnataka GST Act, 2017 ('collectively referred to as 'GST law'), for an activity to be taxable in India, the same must be covered under the definition of the term "supply". Supply is defined under Section 7 of the Central Goods and Service Tax Act, 2017 (CGST Act, 2017). Relevant extract of Section 7 has been reproduced as below

"1) For the purposes of this Act, the expression "supply" includes,-

- (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- (b)"

As per the above provisions, any sale of goods or services or both for a consideration would qualify as supply under the provisions of GST law.

5.2 In the present case, the Indian Manufacturer is undertaking sale of goods to the Applicant and delivering the goods directly outside India on direction of the Applicant. Such a transaction of 'Sale' between the Indian Manufacturer and the



Applicant would amount to 'supply' under the GST Law. Further the above supply is merely a trading of goods transaction wherein agreement between Applicant and Overseas customer is on principal to principal basis. Similarly transaction between Applicant and Indian Manufacturer is also on principal to principal basis.

5.3 Once we have established that there is, indeed supply of goods being undertaken between the Indian Manufacturer and the Applicant, It would be important to analyse whether the same qualifies as "export of goods" under the GST Law. The term 'export of goods' is defined under Section 2(5) of the IGST Act, 2017. Relevant extract of said section is as under.

"(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India"

5.4 A perusal of Section provides that taking goods out of India to a place outside India would be treated as export of goods. In the present case, the Indian manufacturer is undertaking the Custom Clearance as Exporter and undertaking issuance of bill of lading for transfer of title of goods. Such Bill of lading is transferred to Applicant from Indian Manufacturer for transferring ownership of the goods once, goods reach at port of Export beyond the Customs frontier. The Applicant further transfer such Bill of Lading to Overseas Customer along with its invoice to supply such goods to Overseas Customer and allow him to get such goods cleared from Overseas Customer's Country port.

5.5 Accordingly, in the facts of the present case though Customs formalities are being undertaken by the Indian Manufacturer and shipping bill is filed by the Indian Manufacturer, but goods are actually being taken outside India by the Applicant. Accordingly, in our view, for the purpose of determination of tax on the transaction, the present transaction falls within the ambit of definition of 'export of goods' as Applicant is taking goods to a place outside India from a place within India, i.e., Applicant is taking the goods from the Customs Port to the Overseas Customer premises even though shipping bill is not filed by the Applicant.

5.6 Given that export of goods has been specified to be a 'zero rated supply' under Section 16 of the IGST Act, in our view, the transaction in question qualifies as 'Zero Rated Supply' in accordance with Section 16 of the IGST Act, 2017.

Alternative tax treatment of transaction

5.7 As per Section 7(2)(a) of the CGST Act, 2017, certain transactions listed in Schedule III would not be treated as supply of goods or services. As per entry number 7 of the Schedule III, supply of goods from non-taxable territory to a place in non-taxable would not be treated as supply of goods for the purpose of CGST Act, 2017. Extract of said entry is as under:

"Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India".



5.8 In the present case, the Indian Manufacturer is supplying goods to the Applicant and filing shipping bill and bill of lading for export of such goods. In case an alternative argument is taken that the export of goods is actually being undertaken by the Indian manufacturer instead of the Applicant, the place of supply for such supply would be determined as per Section 11 of the IGST Act, 2017.

5.9 As per Section 11 of the IGST Act, 2017, place of supply of goods exported out of India shall be the location outside India. Hence, place of supply for goods supply by Indian Manufacturer to the Applicant would be the location outside India.

5.10 Subsequently, the Applicant is supplying such goods to the Overseas Customer. Since, place of supply of goods supplied by Indian Manufacturer is outside India, it can be said that the Applicant is supplying goods from a location outside India to another location outside India. Accordingly, such transaction would fall under the ambit of entry number 7 of the Schedule III and would not be treated as supply for the purpose of GST law.

5.11 Hence, the Applicant humbly prays that in case the transaction is not treated as export of goods, it will still be covered under Schedule III and would not be subject to GST.

PERSONAL HEARING PROCEEDINGS

6. Ms. Neha Kishore, C A and Sri. Devansh Gupta, C A, Ernst & Young LLP & Authorised Representatives of the applicant appeared for personal hearing proceedings held on 29-09-2022 and reiterated the facts narrated in their application. However on request an additional personal hearing was granted on 10-11-2022 and Ms. Neha Kishore, C A, Sri. Devansh Gupta, C A, Ernst & Young LLP & Authorised Representatives of the applicant along with Sri. Ranjit Ahluwalia, General Manager (Finance & Accounts) appeared for personal hearing through video conference and submitted their arguments.

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 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.

8. 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.



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9. The applicant stated that they are a Private Limited Company registered under the provisions of CGST/KGST Act 2017; they are engaged in trading of finished goods and also in providing support services to customers located outside India; they intend to enter into a new business transaction wherein the applicant would be engaged in supplying domestically procured goods to customers outside India. In view of the foregoing, the applicant sought advance ruling as to "**Whether the supply of goods from the Applicant to the overseas customer is taxable under GST as a zero rated supply or not.**"

10. Facts relevant to the transaction as stated by the applicant are as under:

- (i) a purchase order would be issued by the overseas customer, for certain goods, and the applicant places order for procurement of the required goods to the domestic manufacturer / vendor of the goods.
- (ii) the applicant enters into a contractual agreement with the Indian Manufacturer making the said Indian manufacturer responsible for undertaking the applicable customs duty compliances such as documentation for outbound customs clearance as Exporter and filing of Bill of Lading for transportation of goods to the overseas customer on the direction of the applicant. The applicant instructs the Indian manufacturer to ship the goods from their location/factory directly to the location of the overseas customer and thus the goods would be shipped from the Indian Manufacturer's premises to a foreign destination, without delivering the goods physically to the applicant.
- (iii) Two invoices will be raised in the transaction i.e. one invoiced by Indian Manufacturer on the Applicant and the other by the Applicant on Overseas Customer.
- (iv) The consideration, for the said transaction, would be paid by the Overseas Customer either in advance or subsequent to receipt of the goods, in convertible foreign currency duly supported by the Bank Realisation Certificates (BRCs) which is credited into the foreign currency account maintained by the Applicant. Further the Applicant remits the payment to the Indian Manufacturer in foreign currency out of their foreign currency account maintained in India. The Applicant also stated that alternatively the Overseas Customer will open a Transferable LC in Foreign Currency in favour of applicant and the applicant, in that case, would then partially transfer the same LC in favour of the Indian Manufacturer for the price agreed upon and such transactions are covered under permitted transactions for EEFC accounts as allowed by RBI and FEMA guidelines.
- (v) The Applicant, in their books of accounts, would record the transaction between the Applicant and the Indian Manufacturer as 'purchase of goods'



and the transaction between the Applicant and the Overseas Customer as 'sales of goods'.

11. From the above facts of the case, we find that there are two transactions involving the applicant. The first transaction is of supply of goods by the manufacturer to the applicant and the second transaction is of supply of the same goods by the applicant to an overseas customer.

12. As per the agreement with the applicant, the Indian manufacturer undertakes to supply the goods and complete all the export compliances including filing of Shipping Bill as an exporter and also receives Bill of Lading from shipper.

13. In this regard we invite reference to the term "exporter", as defined under Section 2(20) of the Customs Act 1962, which is as under:

2(20) : "exporter", in relation to any goods at any time between their entry for export and the time when are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

It could be inferred from the above definition that an exporter, in relation to any goods, can be any one of the following:

- (i) Owner of the goods
- (ii) Beneficial owner of the goods
- (iii) Any person holding himself out to be the exporter.

14. We also invite reference to the term bill of lading as defined by United Nations Conference on Trade and Development (UNCTAD), Geneva in its report of 1971 titled 'Bills of Lading' as under:

Bill of lading may be described as-

- (a) *A receipt signed by or on behalf of the carrier and issued to the shipper acknowledging that goods, as described in it, have been shipped in a particular vessel to a specified destination or have been received in the ship-owner's custody for shipment;*
- (b) *A memorandum of the terms and conditions of the contract of carriage, which will, in fact, almost invariably have been concluded much earlier than the signing of the document;*
- (c) ***A document of title of goods which enables the consignee to take delivery of the goods at their destination or to dispose of them by the endorsement and delivery of the bill of lading.***

15. From the above it is seen that the person claiming 'exporter' is the owner of the goods, and also the bill of lading is proof of title of goods when the goods are handed over to the shipper. Since the manufacturer files the shipping bill as



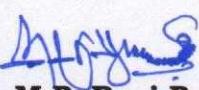
exporter and also gets the bill of lading issued to him, he is the owner of the goods and holds the title of goods till they cross the customs frontiers of India. In effect the manufacturer takes the goods out of India to a place outside India while he is holding ownership and title of the goods, i.e., he exports the goods in terms of Section 2(5) of the IGST Act, 2017. Thus the manufacturer is the exporter of goods. Therefore in the first transaction of supply of goods by the manufacturer to the applicant, the place of supply of goods shall be the location outside India in terms of Section 11(b) of the IGST Act, 2017.

16. In respect of the second transaction involving the supply of the same goods by the applicant to overseas customer, it is observed that the goods are supplied from a location outside India to a location outside India, i.e., the supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. The said transaction is covered under Entry 7 of Schedule III of CGST Act, 2017 as a transaction or supply which shall be treated neither as a supply of goods nor a supply of services.

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

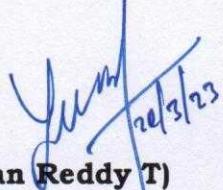
RULING

The supply of goods from the Applicant to the overseas customer is treated neither as supply of goods nor as supply of services.


(Dr. M.P. Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place : Bengaluru, Bengaluru-560 009
Date : 20-03-2023


(Kiran Reddy T)

Member

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 Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-21, Bengaluru.
5. Office Folder.

