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SAN Engineering & Locomotive Company Ltd ., In re

Date: 23-Apr-2020

Authority for Advance Ruling - Karnataka

Advance Ruling

KAR ADRG 21/2020

Applicant	SAN Engineering & Locomotive Company Ltd
Summary	<p>Q) Whether the supply of power packs, freight and insurance service and commissioning and installation service is a composite supply or not?</p> <p>A) Section 15(2) of the CGST Act, 2017 states that the value of supply shall include incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services. Hence the applicant has to transport the goods and deliver the power packs to the recipient and the amount charged to do this is a part of the value of the goods supplied. Hence the freight and insurance charges are part of the value of supply of power packs, since the supply contract is a contract for supply of power packs and the value of the contract is the sum total of the value of the power pack plus all charges charged to the recipient for anything done till the goods are delivered to the recipient.</p> <p>Even if these supplies, i.e. supply of power pack and supply of freight and insurance are distinct supplies, the same would be covered under the definition of "composite supply" as per section 2(30) of the CGST Act, 2017, as the same are naturally bundled and supplied in conjunction with each other in the ordinary course of business. The principal supply in the case is the supply of power packs. Further section 8 of the CGST Act, 2017 clearly states that the tax liability on a composite supply shall be determined by treating them as a supply of such principal supply. Hence going by this also, the composite supply of power pack and the supply of freight and insurance would be treated as "supply of power packs" only as per section 8 of the CGST Act, 2017.</p>
Related Sections	8- Tax liability on composite and mixed supplies - Central Tax
Related SubSections	2(30) - Central Tax

1. M/s SAN Engineering & Locomotive Company Limited, Whitefield Road, Bengaluru 560048, (hereinafter referred to "the applicant") and having a GSTIN 29AAECS5331H1ZA, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 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 company registered under the provisions of the Goods and Services Act, 2017. The applicant states that he is engaged in the business of manufacturing power packs and supplying installation and commissioning service.

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

1. Whether the supply of powerpacks, freight and insurance service and commissioning/ installation services as per the Purchase Order 08/16/2730/1838/f dated 05.11.2016 has to be treated as "Composite Supply" as defined in section 2(30) of CGST Act, 2017 read with section 8(a) of CGST Act, 2017 or freight and insurance service and commissioning/Installation can be treated independent of supply of power packs given that installation and commissioning takes place after 4-5 months of supply of power packs.

Installation and commissioning invoice can be only raised after obtaining confirmation from the customer that the Installation and Commissioning has been completed and a Completion Certificate to that effect has been issued.

4. The applicant furnishes some facts relevant to the stated activity.-

a. The applicant states that he is engaged in manufacture of power packs classifiable under HSN Code Chapter 86 and also in activity of installation and commissioning of the same.

b. The applicant has been issued with purchase order bearing no. 08/16/2730/1838/F dated 05.11.2016 by M/s Integral Coach Factory, Chennai to supply "twin power pack with underslung engine and hydraulic transmission and commissioning/installation of the same in High Speed Self Propelled Accident Relief Train (HS SPART)". As per the said purchase order, the applicant was required to supply 18 numbers of Power Pack to M/s Integral Coach Factory, Chennai and also to install / commission the same in HS SPART. The applicant states that he has supplied and installed some of the Power Packs in HS SPART during the excise / service tax regime and remaining units of Power Packs during GST regime.

c. The applicant states that as per Part-I of the said Purchase Order, the breakup of the price of each Power Pack, packing charges, freight charges, installation/ commission charges and duties/ taxes is as follows:

Details		Price (Rs.)
Basic value for supply of each Power Packs		Rs.5,13,62,000-00
Packing Charges		Rs. 7,70,000-00 extra
Duties / Taxes		As applicable
Freight Charges		Rs. 2,91,000-00 extra
Other Charges	Commissioning/ Installation Charges	Rs. 40,00,000-00 extra
	Insurance Charges	Rs. 2,04,000-00 extra

d. Since the value for the 'supply of goods' and 'supply of services' are separately provided in the Purchase Orders and the same not being naturally bundled and not supplied in conjunction with each other in the ordinary course of business, the applicant does not treat the supply of the same as 'Composite Supply'.

e. The applicant states that he on supply of the power packs in the GST regime, as per SI. No. 241 of Schedule-I to the Notification No. 1/2017-IT (Rate) dated 28.06.2017 in their invoices charged IGST @ 5% on the basic value of Rs.5,13,62,000-00 as agreed in the said Purchase Order.

f. In view of the value for the 'Freight & Insurance Charges' and 'Commissioning/ Installation charges' being separately mentioned in the said Purchase Order, the applicant states that, by treating the same as "supply of service" has raised separate invoices for "Freight & Insurance Charges" and "Commissioning/ Installation Charges". Classifying the Freight & Insurance Charges under SAC 996793 in the invoices they have charged 5% IGST and classifying the Commissioning/ Installation charges under SAC 9954 in the invoices they have charged 18% IGST. The applicant has produced the copies of the invoices raised.

5. Regarding the grounds, the applicant submits as under:-

a. In the said Purchase Order placed by Integral Coach Factory, Chennai to supply Power Packs and Installation 86 Commissioning of the same in HS SPART, there is a component of 'supply of goods' and a component of 'supply of service'. The value for such supply of goods and services are also separately mentioned in the said Purchase Orders.

b. There is doubt that such supply of Power Packs and the related freight service and transit insurance are naturally bundled supply, as they are supplied in conjunction with each other in the ordinary course of business. Therefore, such supply of Power Packs with freight & insurance has to be treated as "composite supply" in terms of section 2(30) of CGST Act, 2017. In the said supply, the Power Pack being the principal supply, the GST rate applicable to principal supply has to be applied for the purpose of levying GST in terms of section 8(a) of CGST Act, 2017.

c. Since such supply of Power Packs and installation 86 commissioning of the same in HS SPART are not naturally bundled and supplied in conjunction with each other in the ordinary course of business, the 'supply of Power Pack' as per requirement of M/s Integral Coach Factory, Chennai and 'installation' of the same are two different supplies.

d. The applicant submits that post such supply of Power Packs, the installation and commissioning of the same into HS SPART can be carried out by M/s Integral Coach Factory, Chennai either by themselves or they can avail installation and commissioning service from any other supplier of service. The supply of Power Packs and the installation of the same in HS SPART are not in conjunction with each other in the ordinary

course or business.

e. The applicant states that as per the said purchase orders, the receipt of power packs at the premises of M/s Integral Coach Factory, Chennai and by inspection of the same, the supply of Power Pack ends. As the supply of commissioning / installation takes place only on receipt of the power packs at the premises of M/s Integral Coach Factory, Chennai and ends with certificate issued by the officer concerned after successful installation and commissioning, hence the 'supply of power pack' and 'installation and commissioning' cannot be considered as "composite supply". The applicant reproduces the relevant provisions of section 2(30) and 8 of the CGST Act, 2017.

f. The applicant states that it is clear from the provisions of section 2(30) and 8 of the CGST Act, that where there is a supply by the registered person to recipient, which consists of two or more taxable supplies of goods or services or both, or a combination thereof and such supplies are naturally bundled and supplied in conjunction with each other in the ordinary course of business and one of such supply is a principal supply, then such supply shall be treated as supply of principal supply.

g. The applicant also submits that Board vide Flyer No.4 dated 01.01.2018 has laid down some illustrative indicators in determining the bundling of services in ordinary course of business which are –

- There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- The elements are normally advertised as a package
- The different elements are not available separately
- The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

h. The applicant also submits that in the given facts there is separate value for 'supply of power packs' and 'installation and commissioning service' invoices are also required to be raised separately on completion of such supplies; the applicant normally will not advertise such 'supply of power pack' and 'installation and commissioning service' as package; the element of 'supply of power pack' and element of 'supply of installation and commissioning' are separately available in the said purchase orders; and the 'supply of power pack' and 'supply of installation and commissioning' of the same are not integral to one overall supply. Without 'installation and commissioning service', the 'supply of power packs' can be affected.

i. The applicant states that in view of the above submissions, as per the purchase orders the supply of power packs with freight and insurance services supplied by the applicant has to be treated as "composite supply" and "supply of installation and commissioning service" as independent supply of service classifiable under SAC 9954 for the purpose of levying GST.

6. Regarding the applicable rate of GST, the applicant states that,-

a. the supply of power packs with freight and insurance service should be treated as "composite supply" as defined in section 2(30) of CGST Act, 2017 and the supply of power pack being principal supply, the same should attract IGST @ 5% upto 01.10.2019 as per SI.No.241 of Schedule-I to the Notification No. 1/2017-IT (Rate) dated 28.06.2017 and post 30.09.2019 should attract IGST 12% as per SI. No. 205G of Schedule-II to the Notification No. 1/2017-IT (Rate) dated 28.06.2017 as amended read with section 8(a) of CGST Act, 2017, and

b. the supply of installation and commissioning of power packs should be treated as independent supply of service classifiable under SAC 9954. The same should attract IGST @ 18% in terms of SI. No. 3 of Notification 08/2017 Integrated Tax (Rate) dated 28 June 2017 as amended.

#### PERSONAL HEARING / PROCEEDINGS HELD ON 20.02.2020

7. Sri K. S. Kamalakara, Cost Accountant and duly authorised representative of the above concern appeared for personal hearing proceedings on 20.02.2020 before this authority and reiterated the facts already submitted above.

#### FINDINGS & DISCUSSION

8. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by him when he appeared for the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

8.1 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar

provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

8.2 The applicant has filed the application seeking advance ruling whether the supply of power packs, freight and insurance service and commissioning and installation service is a composite supply or not and this is not related to the applicability of any entry of notification and hence the same is not dealt here. We do not answer whether the supply is covered at 5% or 12%, as the same is not sought.

8.3 The applicant has stated that there are three components involved in the overall supply between the supplier and the recipient. They are as under:-

- a. Supply of power packs
- b. Freight and insurance related to the power packs
- c. Supply of Installation and Commissioning service.

The applicant himself has stated in para 4 of Annexure C of his submissions that the installation and commissioning can be carried out by the recipient either by themselves or they can avail the services from any other supplier of service. Hence it is clear that the supply of the installation and commissioning is not a part of the supply contract of power packs and hence is an independent service, in case that contract of installation and commissioning is also given to the applicant.

8.4 Hence, the supply of installation and commissioning service would be an independent service and is not a part of the composite supply. The rate of tax applicable to the installation and commissioning service needs to be applied for such supply of service. We are not going into the applicable rate of tax as it is not a part of the question before this Authority.

9. Regarding the other two components, the Purchase Order is verified and found that the terms of conditions states that the mode of delivery is by road on freight pre-paid door-delivery basis. Further, the other charges shall read as Insurance Charges Rs.2,04,000-00 extra.

9.1 Section 15(2) of the CGST Act, 2017 states that the value of supply shall include incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services. Hence the applicant has to transport the goods and deliver the power packs to the recipient and the amount charged to do this is a part of the value of the goods supplied. Hence the freight and insurance charges are part of the value of supply of power packs, since the supply contract is a contract for supply of power packs and the value of the contract is the sum total of the value of the power pack plus all charges charged to the recipient for anything done till the goods are delivered to the recipient.

9.2 Even if these supplies, i.e. supply of power pack and supply of freight and insurance are distinct supplies, the same would be covered under the definition of "composite supply" as per section 2(30) of the CGST Act, 2017, as the same are naturally bundled and supplied in conjunction with each other in the ordinary course of business. The principal supply in the case is the supply of power packs. Further section 8 of the CGST Act, 2017 clearly states that the tax liability on a composite supply shall be determined by treating them as a supply of such principal supply. Hence going by this also, the composite supply of power pack and the supply of freight and insurance would be treated as "supply of power packs" only as per section 8 of the CGST Act, 2017.

9.3 In view of both the above paras, the supply of power packs and the supply of freight and insurance services involved in such power packs shall be treated as the "supply of power packs" and the applicable tax related to such power packs and the time of supply would apply to the entire transaction as it applies to the "supply of power packs".

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

#### RULING

1. The supply of power packs and the freight and insurance charges would form part of the value of supply of power packs.
2. The supply of commissioning / installation services supplied by the applicant are independent services supplied by the applicant and is independent of the supply of power packs.