



2018 (13) G.S.T.L. 221 (A.A.R. - GST) [23-04-2018]

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BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, KARNATAKA
Shri Harish Dharnia, Member (Central Tax) and Dr. Ravi Prasad M.P., Member (State Tax)

IN RE : RAJASHRI FOODS PVT. LTD.

Ruling No. KAR ADRG 6/2018, dated 23-4-2018

Supply of services - Sale of manufacturing unit - Transaction envisaging transfer of all assets to buyer and takeover of all liabilities by buyer - Transaction postulates continuity of business - Unit functional and to be transferred as a whole to new owner - Transaction amount to transfer of going concern as a whole - Part 4(c) of Schedule II to Central Goods and Services Tax Act, 2017 provides that when business is transferred as a going concern it does not amount to supply of goods - Such transaction not covered under Part 5 of Schedule II relating to supply of services - Transaction covered under Serial No. 2 of Notification No. 12/2017-C.T. (Rate) and constitute supply of services - Section 7 of Central Goods and Services Tax Act, 2017. [paras 7.1, 7.2, 7.3.1, 7.3.2, 7.3.3, 7.3.4, 10]

Supply of services - Transfer of going concern, as a whole or an independent part thereof - Exemption under Notification No. 12/2017-C.T. (Rate) - Applicant only asserting that transaction involved a going concern - No documentary evidence to establish that transfer was of going concern - Nil rate of tax as provided under Serial No. 2 of said Notification applicable subject to condition that unit was a going concern - Section 7 of Central Goods and Services Tax Act, 2017. [paras 8.1, 9, 10]

Ruling in favour of assessee

REPRESENTED BY : Shri S. Amarnath, Director, for the Assessee.

[Ruling]. - M/s. Rajashri Foods Private Ltd. (hereinafter referred to as 'Applicant') holding GSTIN Number 29AAACR6946B1ZC, having registered address at #17, Platform Road, Seshadripuram, Bengaluru - 560 020 have tiled an application in form GST ARA-01 on 19-12-2017 seeking Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules, 2017 & KGST Rules, 2017. They enclosed copy of challan for Rs. 10,000/- bearing CIN Number SB1N17122900184487 dated 19-12-2017 towards the applicable fee.

2. The applicant, having three manufacturing units situated at Ramanagara, Hiriya and Bengaluru (Seshadripuram), intends to sell the unit situated at Hiriya along with all its fixed assets namely land, building, plant and machinery etc., current assets namely stock and trade receivables, etc., and liabilities namely Bank term loans, bank working capital loans, creditors for supplies, etc., for a lump sum consideration.

3. The applicant has sought Advance Ruling on the following questions/issues :

1. "Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?"
2. "Whether the transaction would cover under Sl. No. 2 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017?"

Both the aforementioned questions are covered under Section 97(2)(g) and 97(2)(b) of the CGST Act, 2017, respectively. The application is, therefore, admitted.

Personal hearing proceedings held on 9-1-2018

4. Sri S. Vishnu Murthy, Chartered Accountant and the authorised representative of the Applicant appeared and presented the case as follows :-

- a. That the unit in question, which is intended to be sold, is an independent one and is involved in the manufacture of animal feeds.
- b. This unit has fixed assets in the form of land, building, plant and machinery and current assets in the form of inventory and receivables. It has also availed term loans from the bank for the purpose of setting up of the unit and working capital loans availed from the banks for meeting the working capital requirements. The unit has also liabilities in the form of sundry creditors and certain outstanding liabilities.
- c. The proposed transaction of sale of unit as a whole involves transferring of all the assets to the purchaser and also taking over of all the liabilities by the purchaser.

Findings & discussion :

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri S. Vishnu Murthy, Chartered Accountant, the authorised representative of the applicant, during the personal hearing. We also

considered the questions/issues on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions/issues raised, the applicant's understanding/interpretation of law in respect of the issue.

6. The Applicant has sought advance ruling on two questions i.e. (1) "Whether the transaction would amount to supply of goods or supply of services or supply of goods and services?" and (2) "Whether the transaction would cover under Sl. No. 2 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017?"

7. The first question before the Authority to decide is whether the aforesaid transaction would amount to supply of goods or supply of services or supply of goods and services.

7.1 The Applicant has stated at Serial Number 15 of their application that they intend to sell one of their animal feed manufacturing units operational since 1990. Further it has been contended that this unit besides having fixed assets in the form of land, building, plant and machinery has current assets like receivables, inventory, etc. Further the said unit is stated to have term loans availed from the banks for setting up of the unit and also working loans for working capital requirements. Furthermore the unit has sundry creditors as well as outstanding liabilities. It has been summarised that the transaction envisages the transfer of all assets to the buyer and the buyer shall also take over all the liabilities.

7.2 The aforesaid statement of facts conveys that the unit sought to be sold is a fully functional unit and the transaction contemplates the transfer of the entire business to a new person, who would not only enjoy a right over the assets but shall also take over the liabilities. It thus postulates that there will be a continuity of business. As the unit is said to be functional and is desired to be transferred as a whole to a new owner it amounts to transfer of a going concern as a whole.

7.3 In the backdrop of the aforementioned facts of the case it now needs to be determined whether the transaction amounts to supply of goods or supply of services or supply of both goods and services.

7.3.1 Section 7 of the CGST Act, 2017 defines the scope of supply. Section 7(1) provides that 'Supply' includes activities such as sale, transfer, barter, exchange, etc., made for a consideration in the course or furtherance of business. This implies that the activity undertaken shall be an action which takes place in the course of regular conduct of business, such as sale or it should have the effect of furtherance of the business. Therefore the activity to be called as supply should be such that undertaking that activity shall amount to conduct of business or enhancing the business. The transfer of a going concern, either as a whole or an independent part thereof, for a lump sum consideration does not constitute an activity taking place in the course of business or for furtherance of business. However since the word 'includes' has been used in Section 7(1) the scope of supply goes beyond the meaning of the expression 'in the course or furtherance of business'. Therefore in the case of the transfer of a going concern even if the act of transfer does not constitute an activity carried out in the course of regular business or for furtherance of business, the activity may still qualify to be termed as a supply.

7.3.2 Section 7(1)(d) stipulates that activities referred to in Schedule II shall be treated as supply of goods or supply of services. In Schedule II the entry at serial Number 4 refers to 'transfer of business assets'. Transfer of business assets is considered as supply of goods. The transfer of business assets implies that a part of the assets are transferred and not the whole business. It is the applicants case that the entire business is proposed to be transferred, where all assets and liabilities will be transferred to the new owner and business would have continuity, regularity and permanency. Thus an entire ongoing activity will get transferred, which would include assets of the business, the stock in trade, cash in hand as also the liabilities attached to the business. Further in Part 4(c) of Schedule II it is provided that when the business is transferred as a going concern then it does not amount to supply of goods. It, therefore, becomes clear that such transfer of business does not constitute a supply of goods.

7.3.3 Activities which constitute supply of services are also described in Schedule II. However the transaction involving the transfer of a going concern is not covered under this Schedule.

7.3.4 This analysis further brings us to the Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017. Column Number 3 of the Table in the said Notification gives the description of the services. Serial Number 2 of the Notification provides for 'Services by way of transfer of a going concern, as a whole or an independent part thereof'. This indicates that the activity of transfer of a going concern constitutes a supply of service. The Notification further provides 'Nil' rate of tax on such a supply.

On the basis of the aforementioned analysis we conclude that the transfer of a going concern constitutes a supply of service.

8. The second question for which a Ruling has been sought is whether the transaction would cover under Sl. No. 2 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017?

8.1 The notification itself speaks that the activity of transfer of a going concern, as a whole or independent part thereof, is exempt from payment of so much Central Tax leviable under sub-section (1) of Section 9 of the CGST Act, 2017. The essential condition in-built in the notification is that the transaction should involve a going concern only. The applicant has only asserted and not proved or shown conclusively that the transaction involves a going concern.

9. A going concern is a concept of accounting and applies to the business of the company as a whole. Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of business as a whole will comprise comprehensive transfer of immovable property, goods and transfer of unexecuted orders, employees, goodwill, etc. In the instant case, the Applicant has not furnished any documentary evidence to establish that the Applicant is a going concern except their admission that its an ongoing business and the transaction proposes to transfer all the assets and liabilities to the new owner. It implies that the business will continue in the new hands with regularity and a nature of permanency.

10. In view of the foregoing, we Rule as follows :

RULING

1. The transaction of transfer of business as a whole of one of the units of the Applicant in the nature of a going concern amounts to supply of service.
2. The transaction of transfer of one of the units of the Applicant as a going concern is covered under Sl. No. 2 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 subject to the condition that the unit is a going concern.

