

**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 25/ 2020

Dated : 23-04-2020

Present:

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

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| 1. | Name and address of the applicant | M/s SOLIZE INDIA YECHNOLOGIES PRIVATE LIMITED 2 nd Floor, Survey No.118, Gayathri Lake Front, Ring Road, Hebbal, Bengaluru - 560 024 |
| 2. | GSTIN or User ID | 29AAACC7355D1ZQ |
| 3. | Date of filing of Form GST ARA-01 | 18.02.2020 |
| 4. | Represented by | Sri. B.S.Janapati, Consultant and Sri Mahadevan V.S., CEO |
| 5. | Jurisdictional Authority - Centre | Asst. Commissioner of GST, North Division-5, 2 nd Floor, No.16/1, SP Complex, Lalbagh Road, Bengaluru-27 |
| 6. | Jurisdictional Authority - State | LGSTO-152, BENGALURU |
| 7. | Whether the payment of fees discharged and if yes, the amount and CIN | Yes, discharged fee of Rs.5,000-00 under CGST Act vide CIN ICIC20022900281990 dtd 19.02.2020 and Rs 5,000-00 under SGST Act vide CIN No. ICIC20012900497658 dtd 31.01.2020 |

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Solize India Technologies Private Limited, Gayathri Lake Front, Survey No, 188, Ring Road, Hebbal, Bengaluru 560024, (hereinafter referred to "the applicant") and having a GSTIN 29AAACC7355D1ZQ, has filed an application for

SOLIZE INDIA



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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 private limited company registered under the provisions of the Goods and Services Act, 2017. The applicant states that he is engaged in the business of supplying software.

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

1. *Whether software supplied by the applicant qualifies to be treated as Computer software resulting in Supply of goods?*

2. *Whether the benefits of Notifications No. 45/2017-Central Tax (Rate) and 47/2017-Integrated Tax (Rate) dated 14.11.17 are applicable to the supplies made to the institutions given in the notification?*

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

a. The applicant states that he is engaged in purchase of software from their principal partner and supply the same to their customers. The conditions of agreement between principal partner, applicant and customers inter-alia include that the applicant and customers shall not:-

- Decompile, disassemble or otherwise to derive the source code for the Software
- Modify, alter, adapt, translate and create derivative works from the software
- Remove, alter or obscure any proprietary notices, labels, or marks from the Software
- Copy or reproduce the Software in whole or in part, except as may be required for installation into the computer memory for the purpose of executing the Software for licensed use.



- b. The applicant states that the principal partner delivers the Software to the customer directly by providing the License Keys to download on line and to run the Software.
- c. The Software supplied by the applicant is generally used by the customer for designing/ validating/ manufacturing the parts / systems in industries like Automotive, Defence, OEM Tier 1 supplier, Aerospace, Railways, Heavy equipment, Machinery, etc. The functionality of Software (i.e. input to the Software and output from the Software) remains unchanged irrespective of the type of customers (Automotive, Defence, Aerospace etc.) using the same. In other words the software supplied by use could be used by the customers in different fields depending on their requirement. In short, it is a package software and not tailor made one, to suit individual requirement.
- d. The applicant states that their customer base is mainly Government Departments, public funded research institutions and public sector undertakings viz. HAL, VSSC, BHEL, BEML, DRDL, VRDE, CVRDE, IITs at various locations, ADA and NAL, etc.

5. The applicant states that the reasons for seeking Advance Ruling are as under:-

- a. By virtue of Notification No.45/2017-Central Tax (Rate) and Notification No.47/2017- Integrated Tax (Rate) both dated 14th November, 2017, concessional rate of 2.5% CGST and 2.5% SGST or 5% IGST, subject to conditions mentioned in the said notifications, on goods listed in the said notification (including "computer software") was stipulated.
- b. In the said notifications, "Computer Software" was termed as Goods, for the purpose of applicability of concessional rate of GST. However, either CGST Act or SGST Act or IGST Act of 2017 did not define "Computer Software" used in the said notification. Hence ambiguity prevailed in the industry.
- c. In the absence of any definition provided under the law, the Government agencies / public sector undertakings and public funded research institutions are claiming benefit of above notifications, since the software supplied by the applicant is used with computers, thus deeming it as "computer software".



d. The applicant states that the by using the software supplied by the applicant, the end-customer could achieve desired results in their field of operations. It is reiterated that the software supplied by the applicant could be equally used by various customers depending on their requirement.

6. Regarding the applicant's interpretation of law, the applicant states as under:

a. "Computer Software" is not defined in GST Law. The software provided by the applicant is not tailor made but similar to packaged (canned) software as defined in the case of M/s Tata Consultancy Services vs. State of Andhra Pradesh. In the said case the Honourable Apex Court held that Canned (Packaged) Software is termed as "Goods" to attract sales tax levy. In para 24 of the decision (2004 (178) ELT 22 (SC)), the Honourable Apex Court has held that:-

"24. A "goods" may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) utility (b) capable of being bought and sold (c) capable of transmitted, transferred, delivered, stored and possessed. If a software whether customized or non-customised satisfies these attributes, the same would be goods."

b. In view of the above, the applicant states that he is of the view that the claim of the customers is correct in as much as "Computer Software" provided by them qualifies to be treated as "goods" and covered by the Notifications mentioned above.

PERSONAL HEARING / PROCEEDINGS HELD ON 10.03.2020

Sri B.S.Janapathi, Consultant along with Sri Mahadevan.V.S. CEO appeared for personal hearing proceedings on 10.03.2020 before this authority and reiterated the facts and submitted as under:

7.1 The applicant is a reseller of Software, which it buys from the developers of these software and re-sell these softwares to its customers. These softwares are used across the globe by companies similar to the Indian Companies. These software are not developed specific to any customer requirement.



7.2 Irrespective of the type of customer, software remains the same and functions the same. However, different Company used the same as per their requirement. It is packaged software and not tailor made to suit individual requirement.

7.3 Summarily, the applicant states that these softwares as “pre-designed” and “pre-developed” and the usage of the software is controlled through “encryption keys”.

7.4 The applicant also quotes the FAQ in Information Technology (IT) and IT Enabled Services (ITES) and the question 1 states as under:

“Question 1: Whether software is regarded as goods or services in GST?

Answer: In terms of Schedule II of the WBGST Act, 2017, development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use of enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium / storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classified under the heading 8523.”



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 states that he purchases the off-the-shelf software which are not developed for any specific client and the same software is sold to all the clients. Hence we agree that the software sold by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys and hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of "goods". Further, the goods which are supplied by the applicant cannot be used without the aid of the computer and has to be loaded on a computer and then after activation, would become usable and hence the goods supplied is "computer software" and more specifically covered under "Application Software". Hence the supply made by the applicant is covered under "supply of goods" and the goods supplied are covered under the HSN 8523.

9. The Notification No.45/2017- Central Tax (Rate) dated 14th November, 2017 is verified and the said Notification states that the supply of goods are liable to tax at 2.5% CGST when such goods are supplied to the institutions as specified in the column (2) of the said Notification subject to the conditions as specified in the column (3) of the said Notification. The Entry No.1 of the said Notification reads as under:

| S.No. | Name of the Institution | Description of the goods | Conditions |
|-------|--|---|---|
| 1 | Public funded research institution or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital | (a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes, the aggregate value of prototypes received by an | (i) The goods are supplied to or for - (a) a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and such institution produces a certificate to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union |



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| | | <p>institution does not exceed fifty thousand rupees in financial year.</p> | <p>Territory in the concerned department to the supplier at the time of supply of the specified goods; or (b) an institution registered with the Government of India in the Department of Scientific and Industrial Research and such institution produces a certificate from an officer not below the rank of Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union territory in concerned department to the supplier at the time of supply of the specified goods; (ii) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (iii) In the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.</p> |
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9.2 The computer software are covered in the column (3) of the Table present in the Notification No.45/2017 – Central Tax (Rate) dated 14th November, 2017 as amended from time to time. If they are sold to such recipients as covered under Column (2) of the Notification and if they are satisfies the conditions specified in Column (4) of the Notification, then the supply of such computer software would be liable to tax at 2.5% under the CGST Act.

9.3 The above findings are also applicable to the Integrated Goods and Services

Tax as the contents of this notification is similar to the Notification No.47/2017-Integrated Tax (Rate) dated 14th November, 2017.

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

RULING

1. The supply of software supplied by the applicant which is not designed and developed specific to any customer and sold without any customisation, qualifies as “supply of goods” and “supply of computer software as goods”.
2. The benefits of Notifications No.45/2017-Central Tax (Rate) and Notification No.47/2017-Integrated Tax (Rate) both dated 14.11.2017 are applicable to the supplies made if the same are made to recipients if they are covered under Column (2) and if the conditions as specified in Column (4) of the said Notifications.



(Dr.M.P.Ravi Prasad)
Member

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009
Date : 23-04-2020



(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 Asst. Commissioner of Central Tax, North Division-5, Bengaluru.
4. The Asst. Commissioner, LGSTO-152, Bengaluru.
5. Office Folder.