

T. NO-373/2019-20

**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 09/ 2020

Date : 12-03-2020

Present:

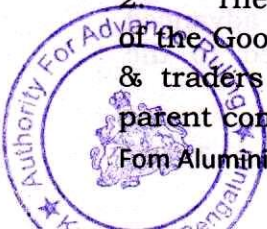
1. **Dr. Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
2. **Sri. Mashhood ur Rehman Farooqui,**
Joint Commissioner of Central Tax Member (Central Tax)

1.	Name and address of the applicant	M/s Fom Aluminium Machines Pvt. Ltd., 3rd Phase, Peenya Industrial Area, Bangalore - 560 058.
2.	GSTIN or User ID	29AABCF2601E1Z5
3.	Date of filing of Form GST ARA-01	21-11-2019
4.	Represented by	Sri Parvatharaj S.B, Authorised Representative.
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, North West Commissionerate, Bengaluru.
6.	Jurisdictional Authority - State	LGSTO-70A, 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 vide CIN UTIB 19082900148443, dated 16-08-2019 and Rs 5,000/- under KGST Act vide CIN UTIB 18112900100020 dated 15-11-2018.

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

1. M/s Fom Aluminium Machines Pvt. Ltd., 3rd Phase, Peenya Industrial Area, Bangalore - 560 058, having GSTIN number 29AABCF2601E1Z5, have filed an application for Advance Ruling under Section 97 of CGST Act 2017, KGST Act 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act 2017 and the KGST Act 2017.

2. The Applicant is a private limited company, registered under the provisions of the Goods and Services Act, 2017. The applicant states that they are importers & traders of Aluminium working machinery; they import machines from their parent company in Italy and market the same in domestic area; they have only one Fom Aluminium



office in India, located at Peenya, Bangalore to cater across the country; they are engaged in Sales, Service & Admn. Personnel to run the business. The applicant had not furnished any relevant facts having a bearing on the questions raised in the instant application and also not furnished their interpretation of law i.e. their view point on issues raised in the questions with the application.

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

- 1) *Is Our Export of Services attract IGST under RCM*
- 2) *Is our Services considered as Intermediary Services*
- 3) *Is IGST paid under RCM eligible to ITC*
- 4) *Provision in GST Returns to show the transactions*
- 5) *We are not collecting IGST from our Customer and is absorbed as Cost-impact on the transaction value?*

PERSONAL HEARING / PROCEEDINGS HELD ON 21.11.2019.

4. Sri Parvatharaj S.B, Authorised Representative of the applicant appeared for personal hearing proceedings held on 21.11.2019 & furnished copies of sample invoices; copies of agreements entered by the applicant with their parent company M/s Fom Industrie s.r.l, Italy and also by the applicant with M/s Universal Pack s.r.l, Italy; a brief description about their business & reiterated the facts narrated in their application.

5. The following facts emerge from the documents furnished during the personal hearing.

- a. The applicant company is a subsidiary of M/s Fom Industrie s.r.l, Italy, a Manufacturer of Aluminum working Machinery.
- b. The applicant is engaged in the business of Importing, Trading & Serving of Aluminium & UPVC Working Machinery. These machines are used for manufacturing Aluminium Doors, Windows & Facades.
- c. The applicant company identifies the customers in India, by using their sales representative / Personnel and refers the said customers to the parent company in Italy.
- d. The applicant stocks & sells the small and medium category of machines, that have been imported, to Indian customers.
- e. The applicant also books the orders for bigger machines which are advanced Automated CNC Machines, which are directly supplied/shipped to the

identified Indian customers by the parent company in Italy. The applicant is not involved in import of the said machines.

- f. The applicant gets sales commission / marketing fee as per clause envisaged in the agreement by the parental company for booking of the direct supply orders.

6. FINDINGS & DISCUSSION:

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Parvatharaj S.B, Authorised Representative of the applicant, during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

6.2 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.

6.3 We observe, on perusal of the information furnished by the applicant, that they are involved in three business activities i.e. (i) they import the machines in their own name, stocks the same and sells the machines, (ii) they book the orders for the parent company M/s Fom Industrie s.r.l., Italy for sale of machines & earns sales commission and (iii) identifies the probable customers for M/s Universal Pack s.r.l., Italy by marketing their products and earns monthly 4000 euros irrespective of the result of the said marketing.

6.4 Now, with this background understanding of the business of the applicant, we proceed to consider & answer each question at a time. We take up the first question, which reads as under :

1. *“is our export of services attracts IGST under RCM?”.*

The applicant seeks advance ruling on the issue that whether their export of services attract IGST under RCM. The Reverse Charge Mechanism is nothing but shifting the tax liability on to the receiver. In the instant case the applicant is, undoubtedly, a supplier and hence the question of levy of IGST on export of services, under RCM, does not arise.

6.5 The second question reads as *“Is our services considered as Intermediary Services ?”*. The instant question is in relation to the second and third type of business activities. We proceed to examine these business activities.

a. The applicant, as an agent of their parent company M/s Fom Industrie s.r.l, Italy, books the orders from the Indian Customers for Advanced Automated



CNC Machines, which are supplied directly to the Indian Customers by their parent company in Italy. The applicant gets sales commission for the direct sales orders booked. The applicant furnished copy of "Agency Agreement" dated 01.01.2012, which shall be automatically renewed from year to year unless terminated one month before the expiration date by written notice. It is observed from the agreement that the applicant is the sole agent of their parent company for the SAARC area and gets the commission for sale orders booked. Therefore the applicant is undoubtedly is an agent of the parent company under this type of transactions.

- b. The applicant also entered "Agency Agreement" with M/s Universal Pack s.r.l (Supplier), Italy, primarily to promote and develop the sale of machines produced by supplier for the markets in SAARC area. The applicant furnished the copy of said agreement dated 01.09.2018 which shall be automatically renewed from year to year unless terminated one month before the expiration date by written notice. It is observed from the agreement that the applicant receives a tax included lump-sum payment of 48,000 Euros per annum, to be paid quarterly 12,000 Euros. The applicant, in addition to this, also gets a commission of 5% on the first five machines sold.

The applicant entered the said agreement where in they have been referred to as a Partner. The "Partner", under the terms & conditions of the agreement, is an agent without exclusive of the supplier for the SAARC area and is authorised to enter the market using the "Universal Pack India" brand on all commercial media used such as letterhead, business cards, website etc. Therefore the applicant is undoubtedly an agent of the supplier under this type of transactions.

6.6 Now we proceed to examine whether the aforesaid business activities get covered under Intermediary Services or not. As per 2(13) of the IGST Act, 2017, "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both, or securities on his own account. Further, as per Section 13 (8) (b) of the IGST Act 2017, the place of supply of "intermediary services" shall be the location of the supplier of services.

In the instant case the applicant acts as an agent, in terms of the aforesaid agreements, to the parent company Fom Industrie s.r.l, Italy as well as M/s Universal Pack s.r.l, Italy beyond doubt. Therefore the supply of services of the applicant under these transactions squarely falls under the Intermediary services and thereby the supply is in the taxable territory and thus the said supply is taxable, under forward charge mechanism.

6.7 Now we proceed to examine the third question which reads as "Is IGST paid under RCM eligible for ITC?" The levy of IGST is only on the inter-state supplies and importation of goods/services is treated as inter-state supply, in terms of Section 7(2)/7(4) of the IGST Act 2017 respectively. The IGST is levied on import of goods, as part of customs duty, and collected under The Customs Act 1962. The IGST paid on clearance of imported goods by the applicant is available for ITC to the applicant. Further import of services attract IGST and the concerned importer has to discharge the said levy under RCM, which is also available for ITC to the importer of services. In the instant case the applicant is not importing any services and hence payment of IGST under RCM does not arise.

6.8 The fourth question relates to the provision/s in GST returns to show the transactions of the applicant. Further the fifth and last question is not even a question but a piece of information that "the applicant is not collecting IGST from their customers & the same is absorbed as cost and thus impacts on transaction value". Both these questions are not covered under the issues prescribed under Section 97(2) of the CGST Act 2017, on which the questions can be raised to seek advance ruling. Therefore no ruling is required to be given on these questions.

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

RULING

1. Export of services by the applicant, if any, do not attract IGST under RCM, as the applicant becomes supplier for the said services.
2. The services being provided by the applicant are squarely covered under the Intermediary Services and accordingly are taxable under forward charge mechanism, in the hands of the applicant.
3. The payment of IGST under RCM does not arise as the applicant is a supplier but not the recipient of import of services.
4. No rulings are given in respect of fourth and fifth questions, as they do not get covered under Section 97(2) of the CGST Act 2017 and hence out of the jurisdiction of this authority.



(Dr. Ravi Prasad M.P.)

Member

MEMBER

Karnataka Advance Ruling Authority
Place : Bengaluru - 560 009

Date : 12-03-2020

Fom Aluminium

(Mashhood ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru..

The Asst. Commissioner, LGSTO- 70-A, Bengaluru.

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