

T.No-370/2019-20

**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 07 / 2020

Date : 10-03-2020

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 Karnataka State Electronics Development Corporation Limited, 2 nd Floor, TTMC A Block, BMTCC Complex, K H Road, Shanthinagar, Bengaluru - 560 027, Karnataka.
2.	GSTIN or User ID	29AABCK6661P1ZT
3.	Date of filing of Form GST ARA-01	11.09.2019
4.	Represented by	Sri. Rishabh Singhvi, C A, M/s R Singhvi & Associates, Authorised Representative.
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate.
6.	Jurisdictional Authority - State	LGSTO- 40, 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 VIJB19092900077370 dated 12.09.2019 and Rs.5,000/- under KGST Act vide CIN VIJB19082900452232 dated 28.08.2019.

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

1. M/s Karnataka State Electronics Development Corporation Limited, (called as the 'Applicant' hereinafter), 2nd Floor, TTMC A Block, BMTCC Complex, K H Road, Shanthinagar, Bengaluru - 560 027, Karnataka., having GSTIN number 29AABCK6661P1ZT, 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 and the KGST Act.



2. The applicant (KEONICS), a Karnataka State Government Entity, is engaged into providing street lighting services, under the Energy Performance Contract (ESCO contract) to the Thane Municipal Corporation (TMC), Thane for a period of 7 years. The ESCO contract is on shared saving model and is to reduce the overall consumption of electricity in street lighting.

3. The Applicant has to operate and maintain 12,000 street lighting fixtures & respective feeder panels i.e. installation of LED fixtures, smart electric panels for automation, metering & comprehensive maintenance. The role of the applicant is as under:

- a) Removal of the existing street lights and handing over the same to TMC.
- b) Installation of LED street lights on existing street light poles
- c) Installation of new smart feeder electrical panels compatible with LED fixtures at its own cost.
- d) Operation & maintenance of the said LED street lights during the tenure of the contract.

4. The street light poles and the old street lights will continue to remain under the ownership of TMC. The applicant does not have any control over the electrical poles & can't object to or damage any other installations on the poles during the supply. Further the applicant is required to maintain minimum standard of operation, which requires for maintenance of minimum LUX level on road. The applicant, remains to be owner of the newly installed LED lights; is responsible for functioning of the said lights; has to replace, if required, at free of cost; shall surrender all the LED lights & system installed at no cost to TMC, at the end of the contract.

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

- i. Whether the street lighting activity under the Energy Performance Contract dated 05.12.2016 is to be considered as Supply of goods or a Supply of Services under the CGST / KGST Act 2017? Accordingly, whether the transaction can be sub-classified as a 'Pure Supply of Service' or 'Pure Supply of goods' or 'Composite Supply of goods and services being a works contract'?
- ii. What is the rate of tax applicable on this transaction? Whether the applicant is entitled to the benefit of exemption under entry 3 or 3A of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended? If not, what is the applicable rate of tax?
- iii. If the transaction is treated as supply of services, what is the time of supply of such services? Whether KEONICS is liable to tax only once the energy

saved is certified by the energy auditor? Whether amount credited in joint ESCROW account can be termed as 'receipt' especially because the said amount is not under control of KEONICS until the conditions are met?

- iv. Without prejudice to above submissions, if the transaction is treated as a supply of goods, what is the time of supply of such supply? Whether KEONICS would be liable to tax only at the time when the possession and ownership in goods are vested to TMC at the end of tenure? What would be the value of the aforesaid taxable supply given the fact that it is based on energy savings which can be computed only when the energy auditor certifies the workings submitted by KEONICS ?

6. APPLICANT'S UNDERSTANDING OF THE LAW:

6.1 The applicant contends that their activity amounts to supply of pure service, in terms of GST Act, on the basis of the following reasons.

- a) Dominant object of contract is street lighting and energy saving, but not supply of LED lights.
- b) The only supply involved is supply of 'LIGHT' and LIGHT is not goods.
- c) Installation of LED lights is a self-activity & no separate consideration is received. The applicant has the control and access of lighting systems during the entire contract period.
- d) The transaction is not a composite supply at all.
- e) Even if the transaction amounts to composite supply, it would not be works contract and the principal supply would be energy performance service.
- f) Consideration / remuneration is computed purely on the basis of energy savings and performance, on monthly basis.
- g) The applicant is liable for penalty in case lights are not functioning, LUX level is not maintained, minimum guaranteed savings not met.
- h) The activity of street lighting is a function of municipality / corporation, but is outsourced to the applicant, which falls under Article 243W of the Constitution of India.
- i) The goods (LED lights etc.,) are not considered as saleable inventory in the books of accounts of the applicant, but are capitalised as fixed assets.

6.2 The applicant, with regard to rate of GST applicable, contends that their activity, being a pure service other than works contract, squarely gets covered under entry no.3 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017, as amended and hence is entitled to the benefit of exemption. The applicant further



contends that they fulfil all the required conditions to claim the benefit of exemption that

- (i) they provide service to the local authority i.e. TMC;
- (ii) The service being provided by them squarely falls under the functions entrusted to the panchayat under article 243 W of the Constitution of India;
- (iii) The activity is a pure service other than works contract or composite supply involving supply of goods.

6.3 The applicant further contends that if the benefit of entry 3 of the notification supra is not applicable to them or if their supply is considered as a composite supply, then also they would be entitled to the benefit of entry 3A, for the following reasons.

- (i) The value of supply of goods, if at all, is less than 25% of the value of the composite supply
- (ii) The goods would vest with the TMC, only at the end of the contract i.e. after 7 years & at that time the value of the goods become zero, due to depreciation.
- (iii) Rule 43 of CGST Rules 2017 prescribes the life of all capital goods as five years whereas the impugned contract is for 7 years and hence the value of the supply of goods at the end of the tenure is practically zero.

6.4 The applicant with regard to time of supply, in case their activity is treated as supply of service, contends that their contract is in the nature of 'continuous supply of service' in terms of Section 2(33) of CGST Act 2017, as the said service is being provided for a period exceeding 3 months continuously. Further in terms of Section 31(5) of the CGST Act 2017, invoice for such contracts are required to be issued in the following sequential manner:

- Due date of payment as per contract, where due date is ascertainable
- Actual receipt of payment where due date is not ascertainable.
- Payment linked to completion of event, the date of completion of event.

Section 13 provides the time of supply of service and also the liability to pay tax, as the earliest of the following:

- Date of issue of invoice which should necessarily be 30 days from the date of provision of service (r/w Section 31 and Rule 47 of the CGST Rules 2017)
- Date of provision of service where invoice is not issue within 30 days
- Date of receipt of payment.

In the instant case, the applicant should submit the monthly invoices along with the savings calculation as per schedule 3 of the contract. The payment would be released to the applicant only after the energy savings report is submitted to TMC & third party energy auditor and the same is verified & approved. In view of the above, the applicant contends that the due date of payment is not the end of the month, but is only after the energy savings report is submitted & verified by TMC/energy auditor. The payments are released only after completion of 30 days from the date of submission of energy audit report. Therefore the time of supply is 30 working days from the date of submission of approved energy savings report.

6.5 The applicant with regard to time of supply, in case their activity is treated as supply of goods, contends that the tax invoice, in terms of Section 31, need to be issued before or at the time of removal of goods, if the movement of goods is involved. If there is no movement of goods the tax invoice need to be issued at the time at which the goods are made available to the recipient. Further as per Section 12, the time of supply would be earliest of the following:

- Date of issue of invoice or last date of its issuance in terms of Section 31
- Date of receipt of payment with respect to supply

Further Section 15 provides that the transaction value of supply is the price paid or payable for the supply where the price is sole consideration of such supply. The term consideration u/s 2(31) refers to the payment due to be made to the supplier for the supply made.

In the instant case, the consideration would be calculated only after the energy savings is calculated and the applicant is entitled to 90% of the energy saved from the monthly consumption of TMC, which takes place during the entire tenure of the contract. The goods are handed over only at the time of termination of the contract.

Therefore the consideration of the supply (when supply treated is of goods) would be the entire savings during the tenure of contract which can be computed at the end of the tenure. Moreover, the supply of goods takes place only at the end of the contract when the possession and vesting takes place. Hence the time of supply of goods would be at the end of the tenure of contract i.e. at the end of 7 years, as the goods are handed over only at the end of contract.

PERSONAL HEARING / PROCEEDINGS HELD ON 21.11.2019.

7. Sri. Rishabh Singhvi, Chartered Accountant, M/s R Singhvi & Associates, duly authorised representative of the applicant appeared for personal hearing proceedings held on 21.11.2019 & reiterated the facts narrated in their application.



8. FINDINGS & DISCUSSION:

8.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Rishabh Singhvi, Chartered Accountant, M/s R Singhvi & Associates, duly 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.

8.2 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.

8.3 The applicant, consequent to winning of the bid for implementation of ESCO (Energy Saving Contract) project i.e. "Design, Supply, Installation, Testing, Commissioning including operation & maintenance of LED street lights", has been awarded ESCO with the responsibility of street lighting with LED fittings in Thane Municipal Corporation (TMC) area, for a period of 7 years.

8.4 The applicant's responsibilities, pursuant to the aforesaid contract, include installation, operations & maintenance of the street lights; on & off of the street lights; repair & replacement of the street lights at their own cost; ensuring of the street lights operating at the required LUX levels, as prescribed. Non functioning of any street light & non maintenance / operational of the street lights for the minimum up-time would be subjected to penalty.

8.5 The applicant has to remove the existing lights which are under the ownership of TMC & hand over the same to TMC and also install the new street lights. The new street lights would be under the ownership of the applicant, during the tenure of the contract.

8.6 The applicant receives consideration in terms of 'Energy Savings Fee', which is equal to 90% of the actual energy saved multiplied by standard electricity tariff. The increase of the said fee is based on the escalation of 4% over the fixed energy tariff. If the realized energy savings are less than 60%, then penalty is levied on the applicant.

8.7 The applicant, in view of the above, contends that the dominant intention of the contract is to render a PURE service and there is no supply of any goods during the tenure of the contract, as all the goods used in the contract are under the ownership of the applicant. Further, the activity, being pure service other than works contract, gets covered under entry No.3 of Notification 12/2017-Central Tax(Rate) dated 28.06.2017 as amended, the required conditions are fulfilled and hence is entitled to the benefit of exemption.

8.8 The applicant further contends that if their activity is considered as a composite supply & the benefit of exemption under entry No.3 supra is not extended to them, then also they would be entitled for exemption under entry No.3A of the notification supra.

8.9 The applicant, with regard to time of supply, contends that their contract is in the nature of 'continuous supply of service', in terms of Section 2(33) of the CGST Act 2017, as the contract is for a period exceeding 3 months; they raise monthly invoices along with energy savings calculation; the energy savings report gets verified & approved by third party energy auditor and hence the payments are released only after completion of 30 days from the date of submission of energy audit report and therefore the time of supply is 30 working days from the date of submission of approved energy savings report.

8.10 The applicant, with regard to time of supply, contends that in case their activity is treated as supply of goods, the time of supply would be earliest of (i) date of issue of invoice or last date of its issuance as per Section 31 of the CGST Act 2017 (ii) date of receipt of payment with respect to supply; consideration is received on monthly basis during the entire tenure of the contract and is equivalent to the value of 90% of energy saved; the goods are handed over at the time of termination of contract and hence the time of supply of goods would be at the end of the tenure of contract i.e. at the end of 7 years.

9. The main issue before us to decide is whether the activity of the applicant herein amounts to supply of goods or supply of services and then the time of supply of the said supply. We proceed to examine, the nature of supply, of the applicant.

9.1 We examine the Tender Notice No.46, wherein the nature of work is mentioned as **"Implementation of ESCO project" which includes "Design, Supply, Installation, Operation and Maintenance of LED Street Lights"**. It is clearly evident from the aforesaid nature of work that the contract involves design, supply & installation of LED Street Lights and thereafter operation & Maintenance of the same. The entire contract depends on supply of LED Street Lights without which the other aspects of the contract can't be fulfilled / attended to. In this regard we draw attention to the terms of the contract.

9.2 The following facts emerge, on detailed scrutiny of the terms of the contract, made between the applicant and the TMC.

- (i) "Operation & Maintenance (O&M)" means all the activities required for operation and maintenance of the street lighting system handed over to the contractor (Applicant herein) within the Project Area including, but not limited to smart feeder panels, cables / conductors, connectors, fuses, poles, pole earthing, junction box, fixtures, wires etc., (Clause 1.1 of the contract)



- (ii) The contractor undertakes the implementation of energy conservation measures, installation of smart feeder panels for automation & metering and operation & comprehensive maintenance of 12,000 street lighting fixtures and respective switching points identified through the Third Party Energy Audit within the project area (the "Project"). The energy performance contract is for implementation of ESCO project for street lighting on shared saving mode. – (preamble of the contract)
- (iii) Scope of work of the contract is divided into 3 phases. Phase I covers identification of infrastructure of the existing street lighting system, maintained by TMC. Phase II includes design, installation, operation and transfer of LED streetlight as per the road-wise specifications provided in the contract. Phase III is operation & maintenance of street light system for 7 years (Clause 29.6 of the contract read with Schedule I of Tender Notice).
- (iv) The contractor, under Phase II & on the basis of the approval, should start replacement of light fixtures, brackets, underground cables, wires, junction boxes, earthing etc., After the LED installation work is completed, feeder panel-wise street lighting system will be handed over to the ESCO (contractor), for maintenance for the remaining contract period. (Clause 6- Time line for implementation of the project under Phase II- Page 17 of the contract)
- (v) TMC shall at all times during the term remain the owner of the land and the existing lighting infrastructure facilities excluding smart feeder panel and LED light fixtures installed by the contractor. The contractor shall hand over, the street lighting fixtures/fittings & any other equipment that have been replaced by the contractor, to TMC at the stores within 48 hours of replacement. (Clause 7.1 of the contract)
- (vi) The Contractor shall remain the owner of the equipment and systems installed, during the term of the contract; shall undertake all the procurement of equipment and services necessary for the project; shall handover any replaced equipment (which shall be free of lien), fittings or other items to TMC with proper documentation for TMC's verification; shall submit to TMC a list of all the equipment, fittings or other items that were replaced during the terms of project. (Clause 7.2 of the contract)
- (vii) At the expiry of the term, all the rights and titles to, and interests in, all improvements and software & hardware installed in control room along with equipment constructed or systems installed are vested in TMC. The contractor shall surrender possession of the said equipment and systems to TMC in good repair and condition, reasonable wear and tear accepted.

- (viii) The TMC shall pay the contractor a fee for the energy savings (the "Energy Savings Fee") in Indian Rupees, as consideration for the energy savings achieved with respect to the energy baseline consumption norm.

The energy savings fee is computed as under:

Energy Savings Fee for a given month = 90% * {actual energy saved in a given month(kwh)} * {Tariff (5.8/kwh) assumed for making payments}

- (a) 10% represents the actual share of savings passed on to Municipal Corporation based on overall savings achieved.
- (b) Energy savings in a given month should not be less than the minimum guaranteed savings of 60% of Municipal Corporation.

[clause 16.1 of the contract]

10. We find from the analysis of the terms of the contract that the contract involve more than two taxable supplies such as supply of LED lights, fixtures & other equipment, their installation, commissioning, operation & maintenance etc., We also find that the impugned supplies of goods and services are in conjunction with each other in the ordinary course of business and hence the impugned transaction satisfies the ingredient of composite supply, as defined under Section 2(30) of the CGST Act 2017. Now we proceed to discuss and conclude the principal supply of the said composite supply.

11. The term 'Principal Supply' is defined under Section 2(90) of the CGST Act 2017 and is as under:

"Principal Supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary"

In the instant case, the tender is for ***"Implementation of ESCO project" which includes "Design, Supply, Installation, Operation and Maintenance of LED Street Lights"***. Hence the predominant and principal factor is to supply and install LED street lights, on the existing street light poles and then to perform the activity of day to day management of the said LED street lights by operating & maintaining such equipment to achieve energy savings. Thus the day to day operation & maintenance of the LED Street lights can only take effect after the supply and installation of the said LED street lights. The other supply would be severely affected or may be meaningless, in the absence of supply & installation of the LED Street lights. Therefore, without installation, there can be no day to day management in the form of operation & maintenance of LED street lights. In view of the above, the principal supply in the impugned transaction is that of supply of goods i.e. LED street lights.



12. Therefore, the impugned transaction consists of supply of goods and services, made in conjunction with each other in the ordinary course of business; supply of goods / services are naturally bundled; the contract becomes a composite supply where the principal supply is that of goods and the supply of service is incidental / ancillary to such supply of goods.

13. Now we proceed to decide the classification of the aforesaid composite supply and the GST rate applicable thereon. The principal supply of the said composite supply is that of goods i.e. LED street lights along with relevant fixtures. The LED lights or fixtures including LED lamps are classified under Chapter Heading 9405 and attracts CGST @ 6%, in terms of Sl.No.226 of Schedule II to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended.

14. The applicant contends that their impugned supply qualifies to be a supply of pure services, provided to the Thane Municipal Corporation (TMC), in terms of the functions entrusted under Article 243 W of the Indian Constitution and hence the said service is exempted under Entry No.3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. Further they also contest that if their supply is not entitled for exemption under Entry No.3 of the said Notification, then the said services are entitled for exemption under Entry No.3A of the same Notification, as the value of their supply of materials (goods) is less than 25% of the total value of the contract.

15. It is an undisputed fact that the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 is related to the exemptions of the intra-state supply of services. The Notification is applicable to the composite supplies of goods & services, where the principal supply is that of services. In the instant case, it is already concluded, in the preceding paras, that the impugned supply is a composite supply, principal supply being that of the goods. Hence the said Notification is not applicable to the instant case. Further, it is an admitted fact that the applicant need to supply the LED Street Lights, during the entire contract period as and when it is required and hence the impugned supply becomes continuous supply of goods. Therefore the value of the goods in the impugned composite supply can't be determined till the completion of the contract period.

16. The consideration, in the instant case, is being received by the Applicant on monthly basis, in terms of energy savings fee, as agreed upon by both the parties. The said consideration is for the composite contract comprising supply of LED street lights, installation & commissioning of the same and also maintenance of the said installed LED Street Lights, the principal supply being the supply of LED street lights i.e. goods.

17. Para 1 (C) of Schedule II, in relation to Section 7 of the CGST Act 2017, envisages that *"any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full*

consideration as agreed, is a supply of goods". In the instant case the transfer of the title in goods i.e. LED Street Lights, fixtures, feeder panels etc., will be passed to the TMC by the applicant at the end of the contract period i.e. 7 years, as agreed upon by both the parties to the contract.

18. The impugned contract, in the instant case, is a composite supply where the principal supply is supply of goods. It is an accepted fact that the consideration is received on monthly basis; invoice is raised on energy savings; value of such invoice is equal to 90% of the energy savings. It is pertinent to mention here that the energy savings are directly related to the functioning and quality of the LED street lights etc., i.e. the goods supplied by the applicant. Therefore, the applicant receives the consideration, through the contract period i.e. 7 years, on a monthly basis, on the energy savings. Thus the monthly consideration includes the value attributable to the supply of the goods also. The time of supply of goods in terms of Section 12(2)(a) of CGST Act 2017 is the date of issue of invoice by the supplier. Further, in terms of explanation 1 to the aforesaid Section 12(2), supply shall be deemed to have been made to the extent it is covered by the invoice. Thus the time of supply in the instant case is the date of invoice.

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

RULING

1. The street lighting activity under the Energy Performance Contract dated 05.12.2016 amounts to composite supply where the principal supply is that of supply of goods.
2. The rate of tax applicable on this transaction is 12% (CGST-6% & SGST-6%), in terms of Sl. No. 226 of Schedule II to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended. Further, the applicant is not entitled to the benefit of exemption under entry 3 or 3A of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended, as the impugned supply is not that of pure services.
3. The instant transaction amounts to a composite supply, with supply of goods being principal supply and hence the impugned question is redundant.
4. The time of supply is the date of invoice and the consideration is equal to the value of the invoice, the GST rate being 12%.



(Dr. Ravi Prasad.M.P.)

Member

MEMBER

Place : Bengaluru, Karnataka Advance Ruling Authority

Date : 10-03-2020

KEONICS



(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 Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-40, Bengaluru

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In view of the foregoing, we pass the following

BULDO

1. The street lighting activity under the Energy Performance Contract dated 05.12.2016 continues to constitute supply where the principal supply is that of supply of goods.
2. The rate of tax applicable on this transaction is 12% (CGST @ 6% & SGST @ 6%) in terms of Section 230 of Schedule II to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended. Further, the applicant is not entitled to the benefit of exemption under entry 3 or 5A of Notification No.13/2017-Central Tax (Rate) dated 28.06.2017, as amended, as the impugned supply is not that of pure services.
3. The instant transaction amounts to a composite supply with supply of goods being principal supply and hence the impugned provision is redundant.
4. The date of supply is the date of invoice and the consideration is equal to the value of the invoice, the GST rate being 12%.

(Signature)
 Member
 MEMBER
 Karnataka State Tax Authority
 Bengaluru

(Signature)
 Member
 MEMBER
 Bengaluru