

**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 32 / 2023

Dated: 15.09.2023

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri Kiran Reddy T
Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. Hitze Boilers Private Limited, Plot No 52 and 53, Kunigal Industrial Area, Kallanayakanahalli Village, Hutridurga Hobli, Kunigal Taluk, Tumakuru-572130.
2.	GSTIN or User ID	29AACCH6705L1ZA
3.	Date of filing of Form GST ARA-01	09-02-2023
4.	Represented by	Sri K M Narasimha Murthy, Chartered Accountant and Sri Rahul Rao, Director
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Bengaluru North West GST Commissionerate, North West Division-5, RANGE BNWD5, Tumkur Division
6.	Jurisdictional Authority - State	ACCT, LGSTO-175, Tumakuru
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 and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No. DC2902230036696 Dated 09-02-2023

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

M/s. Hitze Boilers Private Limited, Plot No 52 and 53, Kunigal Industrial Area, Kallanayakanahalli Village, Hutridurga Hobli, Kunigal Taluk, Tumakuru-572130 (hereinafter referred to as 'The applicant'), having GSTIN 29AACCH6705L1ZA have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of 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.



M/s. Hitze Boilers Private Limited

2. The applicant is a Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The applicant is a manufacturer of machineries and industrial boilers.

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

- i. Whether the subsidy received from the Central / State Government to be excluded from the value for the purpose of arriving at the GST liability?

4. **Admissibility of the application:** The question is about the “determination of the liability to pay tax on any goods or services or both” and hence is admissible under Section 97(2) (e) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant has stated that they intend to manufacture and supply plant and machineries to Chinnapuri Silks (Recipient) whose estimated cost is Rs.23,19,100/- (excluding GST) and cost is based on the quotation. The recipient of machinery is eligible for 90% subsidy grants from Central Government and State Government. The total amount of subsidy is Rs.20,87,280/- (being 90% of the costs of the Plant and Machinery). The amount of subsidy will be deposited in an Escrow account opened with Canara Bank where the recipient is the account holder and from this account the funds will be transferred to the supplier of Machinery, M/s. Hitze Boilers Private Limited (the Supplier).

5.2 The applicant has stated that the recipient is insisting that the supplier shall charge GST on the total invoice amount as reduced by the subsidy amount which is sanctioned to him and this is in line with Section 2(31) of CGST Act wherein consideration shall exclude any subsidy given by the Central Government or a State Government.

5.3 The applicant states that Section 15(2)(e) of CGST Act states that value of goods for GST shall exclude subsidies provided by the Central Government / State Government. They have relied on the decision of AAR Karnataka in the case of M/s. Rashmi Hospitality Services in Advance Ruling No. KAR ADRG 61/2019, dated 20th September 2019.

5.4 This office had addressed a letter to the Principal Commissioner of Central Tax, Bengaluru North West GST Commissionerate on 10-02-2023 to file comments on the application filed. In response to this, the Commissioner of Central Tax, Bengaluru North West GST Commissionerate has furnished comments as below:

2. In this case, the Central Silk technological Research Institute (CSTRI), Central Silk Board, Bangalore is a Central Government Organisation under the Ministry of Textiles, Government of India have brought out various schemes of post cocoon sector under Central Sector Scheme namely “Silk Samagra”. Under the said scheme the CSTRI empanelling the competent manufacturers and suppliers from different states of the country at lowest rates in accordance with revised Public



Procurement (Preference to Make in India), Order No.P45021/2/2017-PP(BE11) of Ministry of Commerce and Industries, GOI dated 04-06-2020. The Central Silk Board invites bids in two bid system for empanelment of manufacturers / suppliers for the supply of machinery through a tender document which is available at www.eprocure.gov.in. The CSTRI reserves the right to accept or reject the tender including issue of the clarification of the bidding documents.

The Public Procurement (Preference to Make in India), Order 2017 is the policy of the Government of India to encourage make in India and promote manufacturing and production of goods and services with a view to enhance income and employment and procurement by the Governments substantial in amount and can contribute towards this policy objective and local content can be increased through partnerships with local companies establishing production units in India or with Indian suppliers. The said order is issued in pursuant to Rule 153 (iii) of the General Financial Rules 2017. The said order also defines the supplier as local supplier (manufacturer and supplier) and also the procuring entity such as the Ministry or Department or attached or subordinate office of or autonomous body controlled by the government of India and includes government companies. The standing committee consisting of Secretary, DPIIT as Chairman, and the Members consists of Secretary, Commerce, Secretary, Ministry of Electronics and Information Technology, Joint Secretary (Public Procurement), Department of Expenditure and Member Convener as Joint Secretary, DPIIT will oversee the implementation of the Order.

The Government invites tender which allows bidding of the documents, consisting of Financial Bid and technical Bid with certain conditions regarding self-declaration indicating the percentage of machinery etc. Here the Tender inviting Authority and Procurement Authority is the Government. The tender document is entertained between the Government and Supplier of the Machinery. The terms and conditions of the tender document such as General conditions of the contract, the price, non-disclosure agreements, contract form, manufacturers authorization, bidding terms, technical specification etc, are between the supplier and the Government only. The Government also prescribes the mode of payment through an ESCROW Account opened in a nationalized bank by opening a letter of credit (L.C). The amounts will be realized to the supplier based on the instructions to the bank by the government.

In this case, the Central Government had initiated the "Silk Samagra" scheme for establishing production units in India, the government itself undertake various activities such as empanel the suppliers in India, e-procurement of the machinery procedure, submission of the quotation by the supplier, inviting bids in two bid system, payment of amounts to the supplier, opening of ESCROW account and Letter of credit, giving directions to the bank to release the amount to the supplier. However in this process the beneficiary has no role in the initiation of the scheme till completion of contract documents such as, prescribing the terms and conditions of the tender document and general conditions of the contract, entering into non-disclosure agreement, submission of contract form and manufacturers authorization, bidding terms, technical specification etc. Till this stage the



transactions are purely between the suppliers empaneled and the central government or state government.

In order to ensure that the payment of subsidy reaches the particular suppliers, the Government prescribes the opening of an ESCROW account in a nationalized bank through a letter of credit (LC) and monitor the mode of payment in stages. Here the beneficiary has to first deposit 10% of the amount payable and the Government deposit remaining 90% as subsidy to the ESCROW account opened for the said purpose. The 90% of the amount deposited by the Government in the name of Subsidy cannot be used for any other purpose and even the beneficiary cannot utilize for any other purpose except for the intended purpose. This condition is prescribed only to ensure that the subsidy reaches the supplier only. The beneficiary cannot take 90% of the amount as expenditure incurred in their books of account, instead can only take 10% paid by them as expenditure. It is not a case where the beneficiary incur the full 100% of the cost of the machinery and subsequently government pay or reimburse the 90% of the cost to the beneficiary instead the 90% of the cost is incurred by the government directly. Just because an ESCROW account is opened and the subsidy amount is deposited and payment is monitored, it cannot be construed that the subsidy is not received from the government.

The definition and meaning of "consideration" as stipulated in Section 2(31) of the CGST Act, 2017 (In this Act, unless the context otherwise requires,) is as under-

"Consideration-(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

On perusal of the said definition, it is clear the consideration shall not include any subsidy given by the Central Government or a State Government. It is categorically mentioned that consideration shall not include any subsidy given by the Central Government or a State Government. Thus the subsidy amount paid by the government is not to be treated as consideration for the purpose of CGST Act, 2017. The intention of the legislature is to exempt subsidy from GST.

Further, in terms of Section 15(2) of CGST Act, 2017, the value of taxable supply excludes the subsidy provided by the Central Government or State Governments.

Section 2(93) of the CGST Act, defines the meaning and definition of the "recipient" as under

(93) recipient of supply of goods or services or both, means-



- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration.
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

If we carefully peruse the definition of recipient Section 2(93)(a), it is evident that the recipient of supply of goods is the person who is liable to pay that consideration. In this case the government has paid the 90% of the amount and the beneficiary has paid only 10%. Hence the government has to be treated as the recipient of the goods and not the beneficiary in as much as the 90% of the cost is incurred by government. The beneficiary cannot claim expenditure to the extent of 90%. They can claim 10% as expenditure in their books of accounts.

The applicant has relied upon two advance rulings. The same is discussed as under:-

In Advance Ruling Number KAR.ADRG.61/2019 dated 20.09.2019, it is ruled that "the subsidy amount received from the Government of Karnataka for supply of service of food to the ultimate beneficiary in Indira Canteen by the applicant is excluded from the definition of consideration and would not form the part of the turnover on which the tax is liable. The consideration collected from the beneficiary is liable to tax after deducting the tax fraction as the price collected is inclusive of tax".

The said ruling is squarely applicable in this case as the Government has paid the subsidy to the supplier through escrow account and the remaining 10% of the amount is paid by the beneficiary. Hence the 90% of the amount is not includable while calculating the GST and 10% of the amount which is paid by the beneficiary includable for GST purposes. In Indira canteen the subsidy is granted by the government to the supplier only after they furnish the data of the supplies made and collection of the amount from the beneficiary. In case if it is held that the subsidy amount is taxable in this case, then the subsidy amount received from the Government of Karnataka for supply of service of food to the ultimate beneficiary in Indira Canteen by the applicant is also to be included to the definition of consideration and would form the part of the turnover on which the tax is liable to be paid. In such a situation, the intention of the legislation will be defeated. Then the rulings become contradictory to each other.

In Advance Ruling Number KAR.ADRG.16/2020 dated 23.03.2020 in respect of M/s. Megha Agrotech Private Limited wherein supplier claims that, he has no role to play in the transaction between the Government and the supplier and the transaction is only with the beneficiary. The three payment options such



as using financial resources, taking loan from the bank or financial institutions, getting amounts through credit by the beneficiary is discussed.

In the instant case, the 90% of the amount deposited by the Government in the name of subsidy cannot be used for any other purpose and even the beneficiary cannot utilize for any other purpose except for the intended purpose. It is not the case where the beneficiary incur the full 100% of the cost of the machinery and subsequently government pay or reimburse the 90% of the cost to the beneficiary instead the 90% of the cost is incurred by the Government directly.

Under the circumstances, this office is of the opinion that the 90% of the subsidy provided by the Government given to the supplier through ESCROW account is not includable in the "value" as the said amount is not covered within the meaning of "consideration" and "value" and hence not taxable. The remaining 10% of the amount paid by the beneficiary to the supplier is includable in the "value" for the purpose of calculation of tax.

PERSONAL HEARING/PROCEEDINGS HELD ON 21.02.2023 and 13.04.2023

6. Sri Rahul Rao, Director along with Sri K M Narasimha Murthy, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 21.02.2023 and 13.04.2023 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and their submissions made during the time of hearing.

9. The applicant is a manufacturer of machineries and industrial boilers who intends to manufacture and supply plant and machineries to M/s Chinnapuri Silks (Recipient) whose estimated cost is Rs.23,19,100/- (excluding GST). The Applicant states that recipient is eligible for 90% subsidy from Central Government and State Government. The Applicant states that the recipient is insisting that the supplier shall charge GST on the total invoice amount as reduced by the subsidy amount which is in line with Section 2(31) and Section 15(2)(e) of CGST Act. Hence the Applicant wants to know whether the subsidy received from the Central / State Government to be excluded from the value for the purpose of arriving at the GST liability.



10. Now we invite reference to Section 2(31) which defines 'consideration' and the same is reproduced below.

2(31) "consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

10.1 Now we invite reference to Section 15(2)(e) of CGST Act 2017 and the same is reproduced below.

Section 15. Value of Taxable Supply.-

(1) -----

(2) The value of supply shall include-

(a) -----

(b) -----

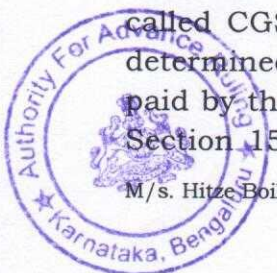
(c) -----

(d) -----

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

11. Section 9 of the CGST Act 2017 stipulates that there shall be levied a tax called CGST on all intra-state supplies of goods or services or both, on the value determined under Section 15 and at such rates as notified and the same shall be paid by the taxable person. Thus, the value of a supply has to be arrived at, as per Section 15 of the CGST Act. Further Section 15(1) stipulates that the value of the



supply of goods or services or both shall be transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

12. In the instant case, the supplier and the recipient are not related and the price is the sole consideration for the supply and thus the transaction value becomes the value of supply. The transaction value is the value of supply and the supplier raises the invoice for full amount i.e. for the full value of the goods being supplied.

13. The applicant contends that the subsidy amount (90% of the total cost) has to be excluded from the value of the supply in line with the Sections 2(31) and 15(2)(e) of the CGST Act 2017, which are reproduced at paras 10 and 10.1. It is observed that Section 2(31) defines 'consideration' and Section 15(2) deals with the component that shall be included in the value of the supply. For determining the value of taxable supply, sub-sections (1) and (2) of Section 15 are to be read in conjunction. As per sub-section 15(1), taxable value shall be the transaction value when the supplier and recipient are not related and price is the sole consideration for supply. Sub-section 15(2) expands the scope of value of supply so as to include such values mentioned in the clauses(a) to (e) of the sub-section. Section 15(2)(e) specifically stipulates that the value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Thus, Section 15(2)(e) seeks to expand the value of supply so as to include subsidies which are directly linked to the price with a condition that subsidies provided by Central Government and State Governments are to be excluded. We find that the phrase providing for exclusion of subsidies by Central Government and State Governments will apply only when two conditions are satisfied viz., (i) when such subsidies are to be added to the transaction value and (ii) when such subsidies are directly linked to the price or affects the price of supply.

14. In the instant case, it is observed that the contract for supply of machinery is between the Applicant and the recipient i.e. M/s Chinnapuri silks; the applicant supplier raises the invoice for the full contract price and even if the recipient is not provided subsidy, the contract price is still recoverable from the recipient. Subsidies provided by State Government or Central Government in the escrow account are not separately recoverable by the Applicant, but are part of the price payable by the recipient. Thus, there does not arise a situation where the subsidies are to be added separately to the transaction value or value of supply payable by the recipient. Also, for the same reason we find that the subsidy is not affecting the price of supply. Only the subsidies provided by Central Government and State Governments which are directly linked to the price and affects the price of supply are not a part of value of supply. Hence the exclusion provided in Section 15(2)(e) is not applicable in the instant case and the subsidies provided by Central Government and State Governments cannot be excluded in determining the value of supply.

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



M/s. Hitze Boilers Private Limited

RULING

- i. The subsidy received from the Central / State Government cannot be excluded from the value of supply as the same is not affecting the price of supply.



(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru, Bengaluru - 560 009

Date: 15.09.2023

To,
The Applicant



(Kiran Reddy T)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Taxes, Bengaluru North West GST Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-175, Tumakuru.
5. Office Folder.



M/s. Hitze Boilers Private Limited