

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 12/2023

Date : 20-03-2023

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. PICO2FEMTO SEMICONDUCTOR SERVICES PRIVATE LIMITED, # 555/649, 1-Sector, HSR Layout, Bengaluru - 560 102.
2.	GSTIN or User ID	29AAJCP9958L1ZA
3.	Date of filing of Form GST ARA-01	29-08-2022
4.	Represented by	Sri. Chetan Kumar, C A & Authorised Representative
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru. (Range-CSD5)
6.	Jurisdictional Authority - State	ACCT, LGSTO-17, 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 & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2908220306590 dated 27.08.2022.

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

M/s. Pico2femto Semiconductor Services Pvt. Ltd., (herein after referred to as 'Applicant'), # 555/649, 1-Sector, HSR Layout, Bengaluru - 560 102., having GSTIN 29AAJCP9958L1ZA, 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, KGST Act.

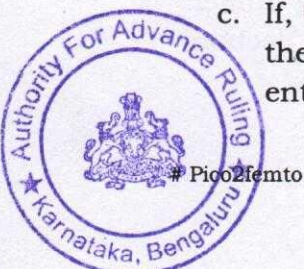
2. The Applicant, a company incorporated under the Indian Companies Act, 2013, is a taxable person registered under the Central Goods and Services Tax Act, 2017 (CGST Act), the State Goods and Services Tax Act, 2017 (SGST Act) and the Integrated Goods and Services Tax Act, 2017 (IGST Act), holding certificate of registration issued thereunder bearing GSTIN: 29AAJCP9958L1ZA, in the State of Karnataka, engaged in the business of “providing/supplying engineering services primarily relating to semi-conductor services”.

2.1 The Applicant has entered into business transfer agreement dated 27th June, 2022 (sale agreement), in writing on a stamp paper of requisite value at Bengaluru, with M/s Tessolve Semiconductor Private Limited, a private limited company incorporated under the Indian Companies Act, 2013, having its registered office and principal place of business, at No. 31/2, Phase-II, Electronic City, Bengaluru-560100, (buyer), a person registered under the CGST, SGST and IGST Acts, in the State of Karnataka and holding certificate of registration issued thereunder bearing GSTIN: 29AABCT9789M1Z7.

2.2 The Applicant submits that in terms of the aforesaid “Business Transfer Agreement / Business Sale agreement” it has sold the independent running business of **“providing/supplying engineering services primarily relating to semi-conductor services”**, along with all the assets and liabilities as a whole as a going concern, on as is where is basis.

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

- a. Whether the transaction of transfer/sale of one of the independent running business divisions of the Applicant, namely, **“business of providing/supplying of engineering services primarily relating to semi-conductor services”** as a whole, along with all the assets and liabilities of the independent business division on a going concern basis, in terms of business transfer agreement dated 27.06.2022, entered into by the Applicant with M/s Tessolve Semiconductor Private Limited, located at No. 31/2, Phase-II, Electronic City, Bengaluru-560100, constitutes a transaction of “supply” under Section 7 of the CGST/SGST Acts?
- b. If, the answer to the above question/point is in affirmative, whether the transaction constitutes supply of taxable goods or taxable services or both? And would be the time of supply, value of supply and rate of tax applicable to such supply?
- c. If, the answer to the First and Second questions are in affirmative, whether the recipient i.e., the purchaser/transferee of the business as a whole is entitle to claim the credit of the “input tax” paid on the said transaction?



- d. Whether the GST rate mentioned in Sl No 2 of the notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 is applicable to the applicant?

3.1 Admissibility of the application : The applicant claimed that the questions on which advance rulings have been sought are with regard to “Applicability of a notification issued under the provisions of the CGST Act 2017”; “Determination of time and value of supply of goods or services or both”; “Determination of the liability to pay tax on any goods or services or both” and “Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or service or both, within the meaning of that term”, which are covered under Sections 97(2) (b),(c),(e) and (g) respectively of the CGST Act 2017 and hence the instant application is admissible.

4. BRIEF FACTS OF THE CASE: The applicant furnishes the following facts relevant to the issue:

4.1 The Applicant, submits that the instrument of business transfer agreement dated 27.6.2022, entered by them with M/s Tessolve Semiconductor Pvt. Ltd., Bengaluru, for transfer of one of the independent running business divisions of the Applicant, namely, **“business of providing/supplying of engineering services primarily relating to semi-conductor services”**, when read as a whole, it establishes that the said agreement envisages transfer/sale of the said business divisions as an ongoing running business as whole, along with all the assets and liabilities thereof to M/s Tessolve Semiconductor Pvt. Ltd., Bengaluru, and therefore, it is “slump sale”, not involving any element of supply of goods or services or both for the purposes of CGST, SGST and IGST Acts. Copy of the above agreement is submitted by way of **Annexure-1**.

4.2 That as is evident from the **Annexure-1**, the instrument of transfer/sale of ongoing running business shows that the consideration for the said transfer/sale of business, is “lump sum” and not vivisected by reference any movable or immovable assets or intangible and tangible assets and services, etc., where the assets and liabilities are transferred as whole on-going concern basis which enables the business to run independently.

5. Applicant's Interpretation of Law:

5.1 The applicant contends, as per their understanding and bona fide belief, that the transaction of transfer/sale of one of the independent running business divisions as a whole, namely, **“business of providing/supplying of engineering services primarily relating to semi-conductor services” along with all the assets and liabilities for a lump sum amount of consideration**, being a “slump sale” in terms of Section 50B of the Income Tax Act, 1961, read with Section 2(42C) thereof and fact that the sale of running business as a whole is not in the regular course of business of the Applicant, it is not a transaction of “supply” of goods or services or both covered within the ambit of Section 7 of the CGST/KGST Acts.



5.2 That even if, for the sake of argument it is accepted that the ambit and scope of the meaning of the expression "supply" in Section 7 of the CGST/SGST Acts is inclusive and exhaustive and therefore, it covers within its ambit "slump sale" of business, yet by virtue of **Section 7(1A) read with Sl.No.4(c)(i) of the SCHEDULE-II of the CGST Act, read with Sl. No. 2 of Notification NO. 12/2017-Central Tax (Rate) dated 28.6.2027, issued by the Central Government implies that the transaction of transfer of business as a going concern on slump sale basis does not constitute supply of goods. Further, relying on the Notification NO. 12/2017-Central Tax (Rate) dated 28.6.2027, the transaction constitutes supply of services at NIL rate of tax.**

5.3 On parity of facts and law, it is also the understanding and bona fide belief that the decision of this Hon'ble Advance Ruling Authority, in the case of **M/s Rajashree Foods (P) Ltd., Bengaluru-560020, delivered in terms of order No. KAR.ADRG.06/2018 dated 23.4.2018**, is squarely, applicable to this present matter of the Applicant.

PERSONAL HEARING PROCEEDINGS HELD ON xx.xx.2022

6. Sri. Chetan Kumar, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings 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 matters 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 also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

9. The applicant has two independent business verticals i.e. Research & Development of Semiconductor chips and Staffing business. The applicant entered into a business transfer agreement on 27.6.2022, with M/s Tessolve Semiconductor Pvt. Ltd., Bengaluru, for transfer of staffing business along with assets and liabilities. The corporate office is located at Tiruchirappalli, Tamilnadu-620021 and the staffing business division is located at HSR Layout, Bengaluru-560102. The applicant intends to sell the staffing division by raising an invoice and thus filed the instant application. The applicant contended that the said agreement



envisages transfer/sale of the said business division as an ongoing running business as whole, along with all the assets and liabilities thereof to M/s Tessolve Semiconductor Pvt. Ltd., Bengaluru, and therefore, it is "slump sale", not involving any element of supply of goods or services or both for the purposes of CGST, KGST and IGST Acts and hence the transaction is not liable to GST in terms of Sl.No.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, being the service by way of transfer of business of a going concern as an independent part thereof.

10. The applicant furnished the following additional submissions, vide their letter dated 26.12.2022, relevant to the impugned transaction.

- a) Staffing business is an independent going concern which is to be transferred as a whole to Tessolve based on the business transfer agreement.
- b) The existing contracts of the company will be transferred and taken over by Tessolve and invoice for which will happen from Tessolve.
- c) The existing employees of the company under the staffing business will be absorbed in the payroll of Tessolve.
- d) The assets and liabilities of the staffing business are absorbed in the books of Tessolve.
- e) The consideration for the transfer is received in multiple states with a performance guarantee and sharing of revenue. The minimum consideration is ₹4.5Cr. and on meeting the performance criteria, the total consideration is ₹27.5Cr including revenue sharing.

11. In view of the above, the applicant sought advance rulings in respect of the questions mentioned at para 3 supra. We proceed to consider and examine the questions one at a time. The first question is whether the activity of the applicant i.e. the sale of staffing business amounts to or results in supply in terms of Section 7 of the CGST Act 2017 and if so whether it is of goods or services. We proceed to examine, discuss and decide the issue. In this regard we invite reference to section 7(1)(a) which is as under:

7. Scope of supply.— (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

It could be inferred from Section 7(1)(a) of the CGST Act 2017, that for any activity to qualify as *supply* under the said Act it should satisfy three limbs/parts i.e. (i) the activity must be a form of supply of goods or services or both, made or agreed to be made; (ii) for a consideration by a person (iii) in the course or furtherance of business. Now we proceed to examine whether the impugned activity satisfies the aforesaid three limbs.



12. The activity of the applicant in the instant case is transfer of staffing business, which is one of the form of supply of goods or services or both, agreed to be made by the applicant and thus the first limb is fulfilled. Further the impugned transaction (supply) is admittedly for a consideration, to be received in multiple stages with a performance guarantee and sharing of revenue and thus the second limb also is fulfilled. The applicant intend to sell the staffing business in the course of his business and thus the third limb also is fulfilled. In view of the foregoing the activity of the applicant amounts to or results in supply in terms of Section 7 of the CGST Act 2017.

13. Now we proceed to examine the second question i.e. whether the impugned supply is of goods or services or both. Also the applicant sought ruling on the time of supply, value of supply and the rate of tax thereon. In this regard we invite reference to the definitions of 'goods' and 'services' under the CGST Act 2017, which are as under:

Section 2(52) – goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Section 2(102) –services means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

[Explanation.— For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;]

It could be seen from the above that every kind of movable property other than money and securities are goods. In the instant case the staffing business of the applicant is being transferred, which is not a movable property and thus the said supply can't be a supply of goods. Further, anything other than goods, money and securities are services. In the instant case as the impugned supply is not of goods as decided above, it is the supply of service. Further in terms of entry at 4(c)(i) of Schedule II [Activities or transactions to be treated as supply of goods or supply of services] of the CGST Act, 2017, transfer of business assets amount to supply of goods unless the business is transferred as a going concern to another person, in which case it amounts to supply of service. Thus the transfer/sale of the independent running business division of the Applicant as a whole, along with all the assets and liabilities of the independent business division as a going concern basis, in terms of business transfer agreement, amounts to supply of service in terms of Section 7(1)(a).



14. Now we proceed to consider the time of supply of the impugned supply. In this regard, we invite reference to Section 13 of the CGST Act 2017, which deals with the time of supply of services and the relevant part of the section is as under:

Section 13. Time of Supply of Services.— (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) the date of receipt of payment shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.



In view of the above, the time of supply of the impugned transaction has to be determined by the applicant in terms of Section 13 of the CGST Act 2017, as the details required to determine the time of supply are not forthcoming.

15. Now we proceed to consider the value of the impugned supply/transaction. In this regard we invite reference to Section 15 of the CGST Act 2017, which deals with the value of taxable supply and the relevant part of said section is as under:

Section 15. Value of Taxable Supply — (1) The value of a supply of goods or services or both shall be the 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.

In the instant case, the supplier i.e., Applicant and the recipient of the supply are not related and the price is the sole consideration for the supply and thus the value of the impugned supply shall be the transaction value, which is the price actually paid or payable. The applicant, accordingly, has to arrive at the value of the said supply.

16. Now we proceed to consider the rate of tax applicable to the impugned supply, for which the classification of the said supply is required. We proceed to decide the classification of the impugned supply of service. In this regard, we invite reference to the Explanatory Notes to the Scheme of Classification of Services, which has been adopted for the purposes of GST. It is observed from the said classification of services that SAC 9971 covers Financial services and related services and SAC 99711 covers Financial services (except investment banking, insurance services and pension services) and SAC 997119 Other financial services (except investment banking, insurance services and pension services). Thus the impugned transaction being a financial service it gets covered under SAC 997119. The rate of GST applicable on the impugned transaction is 18%, in terms of Entry No.15(vii) of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended.

17. Now we proceed to examine the third question i.e. whether the recipient i.e., the purchaser/transferee of the business as a whole is entitled to claim the credit of the "input tax" paid on the said transaction, if the answers to the First and Second questions are in affirmative. It is observed on examination that the question is about the entitlement of the input tax credit by the recipient of the service. In this regard we invite reference to Section 95(a) of the CGST Act 2017 which stipulates that the questions, on which advance rulings can be sought by the applicant, have to be in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. In the instant case the third question is not related to the supply of the applicant but about the entitlement of the input tax credit by the recipient. Thus the question is beyond the jurisdiction and can't be answered.



18. The last question is about the applicability of the benefit of Sl. No. 2 of the notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 to the transaction of the applicant. The said entry prescribes that the *services by way of transfer of a going concern, as a whole or an independent part thereof* attracts NIL rate of GST unconditionally.

In the instant case, the applicant entered into an agreement on 27.06.2022 for transfer / sale of independent division of their running business i.e. staffing division, along with the assets and liabilities. Clause 3 of the agreement is about the consideration of the transaction and clause 3.1 specifies that the total consideration, inclusive of all taxes and revenue sharing amount, is ₹27.5 Crores, payable in 3 years. However, the applicant has not furnished any certificate from the qualified auditor to the extent that the staffing division business is a going concern. Thus in the instant case an independent part (staffing division business) of the applicant's business is being transferred / sold by the applicant. Hence the benefit of Sl. No. 2 of the notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 is applicable to the applicant's transaction, subject to fulfilment of the condition/s of a going concern.

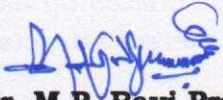
19. In view of the foregoing, we pass the following

R U L I N G

- a. The transaction of transfer/sale of one of the independent running business divisions of the Applicant, namely, ***"business of providing/supplying of engineering services primarily relating to semi-conductor services"*** as a whole, along with all the assets and liabilities of the independent business division on a going concern basis, in terms of business transfer agreement dated 27.06.2022, entered into by the Applicant with M/s Tessolve Semiconductor Private Limited, located at No. 31/2, Phase-II, Electronic City, Bengaluru-560100, constitutes a transaction of "supply" under Section 7 of the CGST/KGST Acts.
- b. The transaction constitutes supply of taxable services, the time of supply has to be determined in terms of Section 13 of the CGST Act 2017, the value of supply need to be determined in terms of Section 15(1) of the CGST Act 2017 and the rate of GST applicable on the transaction is 18% in terms of Entry No.15(vii) of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended.
- c. The question is about the entitlement of the input tax credit by the recipient of the service being provided by the applicant and hence can't be answered in terms of Section 95(a) of the CGST Act 2017.



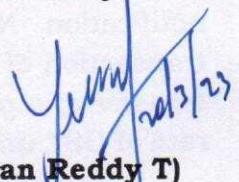
- d. The benefit of entry at SI number 2 of the Notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 is applicable to the applicant subject to fulfilment of the condition/s of a going concern.


(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority
Place : Bengaluru
Bengaluru - 560 009


(Kiran Reddy T)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 20-03-2023

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 Principal Commissioner of Central Tax, Bengaluru South Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-17, Bengaluru.
5. Office Folder.

