

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD, GANDHINAGAR,
BANGALORE - 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017
vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-
2018)

BEFORE THE BENCH OF

SHRI. ROOPAM KAPOOR, MEMBER

SMT. SHIKHA C, MEMBER

ORDER NO.KAR/AAAR/01/2024

DATE: 05-03-2024

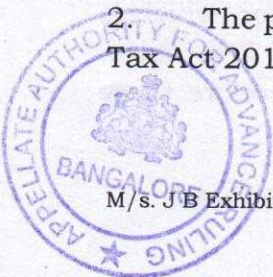
Sl.No	Name and address of the appellant	M/s J.B.Exhibitors, 2 nd Floor, No.1/1, Zinka Plaza, 6 th Cross, Gandhinagar, Bengaluru-560009
1	GSTIN or User ID	29AAMFJ0530C1ZO
2	Advance Ruling Order against which appeal is filed	KAR/ADRG/30/2023, Dated:15 th September 2023
3	Date of filing appeal	06.10.2023
4	Represented by	Shri.V.R.Balasubramani, Advocate and Consultant
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Bengaluru North Commissionerate.
6	Jurisdictional Authority- State	LGSTO 31-Bengaluru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes, Rs.20,000/- (CGST & SGST) paid by debit in Electronic Cash Ledger vide Debit Reference No. DC2910230018082, dated:6.10.2023

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in parimateria 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.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as



M/s. J B Exhibitors

CGST Act, 2017 and SGST Act, 2017) by M/s J.B.Exhibitors, 2nd Floor, No.1/1, Zinka Plaza, 6th Cross, Gandhinagar, Bengaluru-560009 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 30/2023 Dated: 15.09.2023.

BRIEF FACTS OF THE CASE:

3. The Appellant is into the Exhibition of Movies in theatres, wherein the Appellant takes the theaters on lease and operates the theaters. The Appellant collects the GST on the value of the tickets classifying the service under SAC 998554. The Appellant has the intention to diversify the business, by entering into Licensing services for the right to broadcast and show original films, sound recordings, radio and television programmes etc. Hence, the Appellant sought from the Advance Ruling Authority, the correct classification of the Appellant's proposed service of Licensing services for the right to broadcast and show original films, sound recordings, radio and television programmes etc. The Advance Ruling Authority vide impugned order no. KAR ADRG 30/2023 dated 15.09.2023 has given a Ruling relating to classification of licensing services of distribution of rights to exhibit the film by the distributor to the exhibitor and classified under SAC 999614.

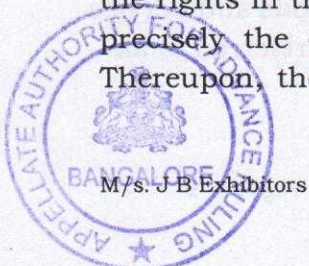
4. The Appellant has filed this appeal stating that the said ruling is totally tangential or divergent to the plea or prayer of the Appellant which related only to classification of Licensing services for the right to broadcast and show original films, sound recordings, radio and television programmes etc. Therefore, aggrieved by the aforesaid impugned order passed by the Karnataka Advance Ruling Authority, this Appeal is being preferred before this Appellate Authority praying for correct classification of the proposed diversified business relating to classification of Licensing of the services for the right to broadcast and show original films, sound recordings, radio and television programmes etc., on the following grounds.

5. GROUNDS OF APPEAL:

I. THE RULING OF THE AUTHORITY FOR ADVANCE RULING IS BEYOND THE SCOPE OF THE PRAYER

a) That the Advance Ruling was required as mentioned in the Application at SI. No.13 of ARA-01. The prayer in ARA-01 was for Determination of Correct Classification of Licensing Services for The Right to Broadcast and Show Original Films, Sound Recordings, Radio and Television Programmes Etc. And whereas the ruling of the Authority for Advance Ruling vide the Order dated 15-09-2023 relates to the classification of the Licensing services of distribution of rights to exhibit the films by the distributor to the exhibition are held classifiable under SAC 999613.

b) That the Authority for Advance Ruling has not been able to appreciate the two stages where classification is necessary, one being the licensing stage and the other being the Leasing stage. To elaborate on this point, Licensing services are those where the owner of the rights in the specified works, assigns another person called the distributor, which is precisely the classification sought by the Applicant in the prayer at the first stage. Thereupon, the distributor merely leasing only the rights to exhibit and therefore these



rights are not transferred, but only given or agreed to the exhibitors to exhibit the films or programmes, which is the second stage.

c) That the Appellant had in the ARA-01 had prayed for Determination of Correct Classification of Licensing Services for the Right to Broadcast and Show Original Films, Sound Recordings, Radio and Television Programmes Etc., which according to them was classifiable in the SAC 997332 and therefore anticipated confirmation of the same. Whereas the Hon'ble Authority for Advance Ruling has gone beyond the prayer has given ruling in respect of a classification not prayed for at all. Hence the said Ruling by the Authority for Advance Ruling amounts to miscarriage of Justice and hence not sustainable in law.

d) Now the question arises is whether any authority can grant the relief beyond prayer? According to the settled position of law, there is no provision or inherent power that authorizes the courts or any authorities to grant relief that is explicitly not requested by the Appellant.

II CONSCIOUS AND DELIBERATE OMISSION OF THE EXCLUSION CLAUSE IN THE EXPLANATORY NOTES AFTER REPRODUCING THE SAME AND NOT GIVING ANY FINDING OR EVEN CONSIDERING EXCLUSION CLAUSE OF 999614

a) At para 8 of the impugned order, the said Ruling the Hon'ble Authority for Advance Ruling is very much aware that the Appellant had sought the advance Ruling in respect of classification on the intended service which falls under Licensing services for the right to broadcast and show original films sound recordings, radio and television programme etc, and hence it falls under SAC 997332

b) Thereafter the Hon'ble Authority for Advance Ruling reproduces the Explanatory notes both in respect of SAC 997332 as well as SAC 9976.

c) At para 10 of the impugned Ruling, the Hon'ble Authority for Advance Ruling comes to an abrupt conclusion that the Appellant intends to enter into distribution of the films by way of licensing the said film only for the purpose of exhibiting in theatres. This clarification or classification was never sought at all any point in time.

d) That at no point of time it can be explained or described as to how such an incorrect conclusion or notion or idea is arrived at and that too suddenly by the Hon'ble Authority for Advance Ruling especially when in the proceedings at para at 8, they categorically mention that the Appellant had sought advance ruling and further contend that the Appellant proposed services falls under Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme etc and hence is covered under SAC 997332.

e) That, it is unable to digest as to how such a blatant, transparent and erroneous conclusion could be reached by the Authority for Advance Ruling when the paragraphs mentioned in the impugned order in the said ruling is contradictory and oppose each other.

f) On this score also, the impugned ruling is liable to be set aside.



III IGNORING AND BRUSHING ASIDE THE EXCLUSION CLAUSE AT ESGIE DESPITE VEHEMENT, STRONG EMPHASIS AND IMPORTANCE BY THE APPLANT

a) Even though the Hon'ble Authority appeared to be satisfied with prolonged argument in this regard at the time of Personal hearing, yet totally deviated from the prayer for giving ruling on Licensing services (by the copyright holder) for the right to reproduce, distribute or incorporate audiovisual originals, but given a total different and diverse ruling that the "classification of licensing services of distributors of rights to exhibit the film by the distributor to the exhibitor are classified under SAC 999614.

b) It is relevant to mention that the Appellant is himself an Exhibitor of films and there is no licensing agreement between the distributor and the Appellant, but only a lease agreement, for a specific period, on revenue sharing basis. In view of the total deviation and departure in the Ruling of the Hon'ble Authority, the impugned Ruling deserves to be set aside and the Appellant shall be classified of the licensing services (by the copyright holder) for the right to reproduce, distribute or incorporate audiovisual originals under 997332 be upheld.

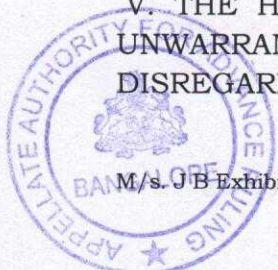
IV. THE HON'BLE AUTHORITY APPEARS TO HAVE PREMEDITTED AND PREDETERMINED TO DEVIATE FROM THE PRAYER OF THE APPELLANT SO AS GIVE AN INCORRECT AND ERRONEOUS RULING

a) That after going through the impugned Ruling passed by the Hon'ble Authority, would come to conclusion that there has been definitely a deviation from the Ruling prayed for and that of the Ruling given.

b) Further, it appears that the Hon'ble Ruling Authority tries to distinguish between the Exhibition and Broadcasting and again appears to commit an error, stating that the exhibitor in the instant case merely exhibits the film in a theatre but does not broadcast the said original film and show it and again comes to an erroneous conclusion-that SAC 997332 is not appropriate and applicable to the prayer in the instant case. As per the understanding and to make the issue clear, it is submitted that the Movies are now typically played on large screens in movie theatres using a digital projector. The projector takes a digital continue reading and the theatres play a file known as a DCP, this file is created by the distributor for the theatres. From a plain reading, it appears that the Hon'ble Ruling Authority is unaware of the present technology by which films are screened in thousands of theatres, at the same time and in different countries.

c) That at this juncture it is very essential at the cost of repetition, to make it very clear that the Appellant had never sought classification of the transaction between the Distributor and the Exhibitor, but the Hon'ble Ruling Authority appears to have moved away from the scope of the prayer in the Application of the Appellant, and hence it is apprehended that the Hon'ble Ruling Authority appears to have premeditated or predetermined the Ruling, which is not justifiable under the settled law.

V. THE HON'BLE RULING AUTHORITY APPEARS TO HAVE LAID EXCESSIVE AND UNWARRANTED EMPHASIS ONSAC 999614 AND VERY CLEARLY IGNORING AND DISREGARD TO THE EXCLCUSION CLAUSE OF 999614.



a) that the Hon'ble ruling authority very cautiously and vigilantly brushed aside the exclusion clause of SAC 999614 which reads as:

"This service code does not include:-licensing services (by the copyright holder) for the right to reproduce, distribute or incorporate audiovisual originals, of 99732"

b) The other observations of the Hon'ble Ruling Authority is more or less repetition of the earlier stand and again and again it is reiterate that the distributor gives license to the Exhibitor for screening the films which is not so in reality as the distributor only leases or rents his right to the Exhibitor to exhibit movies

c) That, it is prevalent in trade parlance, the key difference between the two arrangements which lies in the manner in which the Exhibitor is allowed to use the leased rights. The ownership of the said property rights continues to lie with the Distributor. Whereas, under a lease, the Exhibitor is granted the right to exhibit films only for a specific period by the distributor. Therefore, license and lease are two different, distinct and are poles apart, which difference, is perhaps missed by the Hon'ble Ruling Authority advertently. On these grounds and contentions mentioned supra, the impugned Ruling does have legs to stand and deserves justify dismissal.

d) Further, the Appellant in ARA-01 has mentioned the difference between Entertainment Industry and Recreation. This submission is not considered at all.

e) It is clear that the film distribution comes under SAC 997332 since license is given to the exhibitors to broadcast and show original films and therefore their activity clearly fits into this definition, whereas SAC 9996, the heading relates to "Recreational, Cultural and sporting Services". The sub headings relate to audio visual related services, performing arts and other live entertainment, performance by artists, museum and preservation services, services of athletes and related support services, amusements, etc. therefore according to our firm opinion the classification under SAC 997332 is most specific and appropriate and is accordance with the classification of services under GST.

f) Therefore, it follows that the classification of the services will be under the heading to that service to which they are most akin and Specific. From the above we are of the firm opinion that film distribution comes under 997332 since we give license to the exhibitors to broadcast and show original films. The Appellant's activity clearly fits into this definition and is very Specific to 997332. Whereas SAC 9996 the heading relates to "Recreational, Cultural and sporting Services" The sub headings relate to audio visual related services , performing arts and other live entertainment , performance by artists, museum and preservation services, services of athletes and related support services, amusements, etc.

g) That the Hon'ble Ruling Authority for the best reasons known have not given any finding or a detailed reasoning as to how these submissions are inapplicable to the submitted facts and circumstances of the application filed before them.

h) Hence, the impugned Ruling passed by the Hon'ble Ruling Authority is not a speaking order and many other contentions as mentioned supra in the Grounds of the ARA-01 have been ignored and overlooked. The said impugned Ruling is a non-speaking, unreasoned or



cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto which has always been looked at negatively and judicially de-recognized by the courts all over.

VI. CLASSIFICATION OF THE FILM DISTRIBUTION SERVICE TO THEATRES FOR EXHIBITION ALL OVER INDIA AS IS PREVALENT FROM THE DATE OF COMMENCEMENT OF GST REGIME IN JULY 2017.

a) That the Hon'ble Ruling Authority has held that the classification of film distribution throughout India is under SAC 9973 attracting a GST rate of 12% (earlier) and at 18% from 01-10-2021 and that this classification is followed and approved by all the GST authorities throughout India

b) In order to support this contention, the Appellant has collected some Invoices from Distributors all over the country and had tabulated and mentioned in the Table and copies of the same were enclosed to this Appeal.

c) That now also the table would make it clear that it is an accepted classification throughout the Country followed and acknowledged and which is strictly classified according to the scheme of classification of services. The table exhibits that the classification of film distribution in various parts of the country is under 997332 only, and not under any other service code and therefore to venture into classification would amount to going beyond the scope of Code of classification of services, as specified and published, by the Government of India, and therefore is impermissible. But the Hon'ble Ruling Authority has found it fit and appropriate to simply ignore and did not pay any attention to the Code for the best reasons known. Hence, it is a perverse and vicious Ruling, which earns no consideration and qualifies for dismissal.

PERSONAL HEARING

6. The Personal Hearing was held on 08.02.2024, which was attended by Shri.V.R.Balasubramani, Advocate for the Appellant. He reiterated the contents of their Grounds of Appeal and he submitted a written submission, by email. In the written submission, they briefly stated the grounds of appeal. During the personal Hearing, the Advocate informed that they have not entered into any agreement for the proposed services. However, he stated that they will furnish a proposed agreement shortly. Accordingly, they submitted a draft Agreement for Exhibition of Original Films, vide email dtd.22.02.2024.

DISCUSSIONS AND FINDINGS

7. We have gone through the entire case records including all the written as well as oral submissions made by the Parties. We have also examined the impugned order No. KAR ADRG 30/2023 dtd.15.09.2023 passed by the Authority for Advance Ruling in Karnataka. On careful consideration of the same, the issue to be decided is whether the order passed by the Authority for Advance Ruling is just and proper under the circumstances or needs any interference.



8. In the grounds of appeal, the appellant has argued that the Authority for Advance ruling is beyond the scope of the prayer. They stated that the prayer in the ARA 01 was for determination of correct classification of Licensing services for the Right to Broadcast and show original Films, Sound recordings, video and television programs, etc. and whereas the ruling of the Authority for Advance ruling vide the order dated 15.09.2023 relates to the classification of the licensing services of distribution of rights to exhibit the films by the distributor to the exhibition are held classifiable under SAC 999613.

9. We notice that the Appellant, in the application for advance ruling, stated that they are an exhibitor of films and intend to venture into the business of distribution of films for exhibition in theatres. The appellant had sought advance ruling in respect of the following question:

“Determination of correct classification of Licensing Services For The Right to Broadcast And Show Original Films, Sound Recordings, Radio and Television Programmes Etc under SAC 997332”.

10. As per Explanatory Notes to the Scheme of Classification of Services under GST, the description given under SAC 997332 is as below:

997332: *Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme etc.*

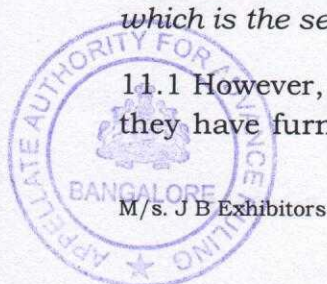
This service code includes: - licensing services for the right to reproduce, distribute or incorporate entertainment, musical such as broadcasting and showing of original films, sound recordings, radio and television programmes, prerecorded tapes and videos.

A careful reading of the question on which advance ruling was sought by the appellant, it emerges that they have used the exact same wordings of scheme of classification under SAC 997332 and have sought for confirmation of the same, instead of seeking correct classification of their proposed activity. In the application for advance ruling as well as in the Grounds of Appeal they have stated that they have intention to diversify the business, by entering into Licensing services for the right to broadcast and show original films, sound recordings, radio and television programmes etc. Here also they have used exact same wordings of SAC 997332.

11. In the Grounds of Appeal, at para I (b), they have stated that -

That the Authority for Advance Ruling has not been able to appreciate the two stages where classification is necessary, one being the licensing stage and the other being the Leasing stage. To elaborate on this point, Licensing services are those where the owner of the rights in the specified works, assigns another person called the distributor, which is precisely the classification sought by the Applicant in the prayer at the first stage. Thereupon, the distributor merely leasing only the rights to exhibit and therefore these rights are not transferred, but only given or agreed to the exhibitors to exhibit the films or programmes, which is the second stage.

11.1 However, in the Application for Advance Ruling and also Grounds of Appeal (para VI) they have furnished copies of some invoices of Distributors to Theatres and claimed the



said service in their support, indicating that they are also venturing into Distribution Services and they need classification of the said distribution services. During the course of hearing held on 08.02.2024, the applicant was informed that the Advance Ruling can only be given when the supply of goods/ services sought to be undertaken or proposed to be undertaken by the applicant is clear. It was observed that the invoices which were submitted to the Advance Ruling Authority along with appeal do not bring out the nature of activity being undertaken by the appellant. It was also not clear what were the rights which were held by the appellant.

11.2: Accordingly the appellant had sought further time to bring clarity and submit further documents in the appeal. In their additional submissions dtd.22.02.2024, they have submitted a draft agreement for "Exhibition of Original Films" which is nothing but an Agreement between Distributor and Exhibitor. For ex. In the preamble it is clearly written that "..... JB Exhibitor, the lessor who holds distribution of the movie.....". Similarly, in para 8 of the draft agreement submitted by the appellant, it is stated that:

Para 8: "The distributor shall be responsible towards the cost incurred"

11.3: We observe that although the title in the draft agreement uses the words "licensing rights service agreement/ assignment of rights service agreement, it is categorically held in the agreement that the licensor holds only the distribution rights. We also observe that despite being pointed out during the course of hearing, appellant has not brought out if he was copy right holder for the product being distributed by him. We would like to observe that the fact whether the appellant is copy right holder would be crucial in determining classification of the activity undertaken by him.

11.4: In view of the above, it appears that they had sought advance ruling on the services relating to Distribution of films to Theatres. But contrary to this, they have claimed at para IV (e) of Grounds of Appeal that the Appellant had never sought classification of the transaction between the Distributor and the Exhibitor. Therefore, we are of the opinion that the Appellant has contradicted and confused the issue. Under the circumstances, analysis of clauses of the actual contract or agreement entered into by the Appellant with the service recipients assumes utmost importance. The Appellant have not furnished any contract or agreement entered into by them for provision of services. Therefore, in our opinion, in the absence of the actual agreements, it is not possible to decide the correct classification.

12. We find that the lower Authority have discussed the issue in detail, along with provisions of SAC 997332 and 999614 and have countered the arguments put forth by the Appellant and have given a ruling that "the Classification of the Licensing Services of distribution of rights to exhibit the films by the distributor to the exhibitor are classifiable under SAC 999614". Under the circumstances, we find that the ruling given by the Lower Authority is just and proper and we do not consider it necessary to interfere with the same. Accordingly, we pass the following order.



ORDER

We uphold the Advance Ruling Order No.KAR ADRG 30/2023 dated 15.09.2023 and dismiss the appeal filed by M/s. J.B.Exhibitors on all counts.



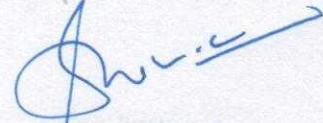
(ROOPAM KAPOOR)

Member

Karnataka Appellate Authority
for Advance Ruling

Member

To Appellate Authority for Advance Ruling



(SHIKHA C)

Member

Karnataka Appellate Authority
for Advance Ruling

Member

Appellate Authority for Advance Ruling

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Copy to:

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, North Commissionerate, Bangalore.
4. The Assistant Commissioner, LGSTO 31- Bengaluru.
5. Office folder.

