M/s. Aquarelle India Private Limited

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 63/2019, dated 20-9-2019 (Authority for… Dated **20.09.2019**

Q Questions Before the Authority

- Whether disposing of assets fastened to the building (on which no CENVAT/VAT credit was taken) on delivering possession to the lessor, for which no consideration will be received, falls within 'supply' under Section 7 of the CGST Act, 2017 and is chargeable to GST under the CGST, KGST and IGST Acts and rules.
- If the answer to the first question is affirmative, whether the value appearing in the books as on the date of disposal may be construed as the 'open market value' on which GST is to be discharged under Rule 27 of the CGST Rules, 2017.

F Facts

The applicant leased its Jayanagar, Bengaluru office premises from 01.07.2011 to 30.06.2022, with a lock-in for the first three years, and now intends to vacate. It proposes to hand over possession to the owner with the fixtures fastened to the building, in 'as is where is' condition and without charging any consideration. The assets were capitalised as office equipment, furniture and fittings before 1 July 2017, and no CENVAT or VAT credit was availed in the earlier regime.

H Ruling

Whether disposal of fastened assets to the lessor, without consideration, is a supply under Section 7 and chargeable to GST	**Yes. The transfer is a supply of goods within the meaning of Section 7 and is chargeable to tax under the GST Acts.**	The supply arises under Section 7(1)(a) read with Schedule II para 4(a), not under Schedule I entry 1, because no ITC was availed. The authority relied on the monetary value of the write-off in the balance sheet as 'consideration' under Section 2(31)(b).
Whether the books value on the date of disposal is the open market value under Rule 27	**The value of supply is: (a) open market value; (b) value of supply of goods of like kind and quality; (c) 110% of the book value of such goods in the books of accounts. If none is possible, Rule 31 applies.**	The book-value limb is stated as 110% of book value in the ruling, whereas Rule 30 as quoted in the order refers to 110% of cost. The books value is therefore not automatically the open market value; it is a fallback, applied only after open market value and like-goods value fail.

The authority held that the transfer of assets fastened to the building, on delivering possession to the lessor free of charge, **amounts to a supply under Section 7 of the CGST Act** and is chargeable to GST. It held that the transaction is not covered by Schedule I entry 1 (because no ITC was availed) but falls under Schedule II paragraph 4(a) (transfer of business assets). On valuation, it held that the **value is determined in the order** of

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open market value, value of like goods, then 110% of book value in the books of accounts, and failing all of these, under Rule 31.

R Reasoning

The authority examined Section 7(1), which covers supplies made for consideration and, under clause (c), activities in Schedule I made without consideration. Schedule I entry 1 applies only where ITC has been availed, and here none was, so clause (c) does not apply. It then considered Schedule II paragraph 4(a), which treats disposal of business assets as a supply of goods whether or not for consideration, and read it with Section 7(1A) (inserted w.e.f. 01.02.2019), which requires an activity first to qualify as a supply under Section 7(1). Treating the balance-sheet write-off as a monetary act in response to the transfer, it found consideration under Section 2(31)(b). Since no price is paid, Section 15(4) and Rules 27, 30 and 31 were applied to fix the value.

P Provisions Relied On

- Section 7(1)(a) of the CGST Act, 2017
- Section 7(1)(c) of the CGST Act, 2017 read with Schedule I, entry 1
- Section 7(1A) of the CGST Act, 2017
- Schedule II, paragraph 4(a) of the CGST Act, 2017
- Section 2(31) of the CGST Act, 2017 (definition of consideration)
- Section 15(1) and 15(4) of the CGST Act, 2017
- Rule 27 of the CGST Rules, 2017
- Rule 30 of the CGST Rules, 2017
- Rule 31 of the CGST Rules, 2017
- Section 97 and Section 98(4) of the CGST Act, 2017 and the KGST Act, 2017 (advance ruling)

! For the Practitioner

This ruling is useful for a lessee who intends to leave fixtures behind on vacating leased premises. It settles that a free transfer of business assets, even where no ITC was claimed, can be a taxable supply under Schedule II paragraph 4(a) for transactions after 01.02.2019, and it sets out the valuation hierarchy. It does not bind any authority other than the applicant, and the reasoning on balance-sheet write-off as consideration is open to challenge. It also does not address whether the GST liability can be avoided by the transferor's treatment of the write-off or by a different structure of the lease exit.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> kar_aar_63_2019_aipl_20.09.19.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com

Patron Accounting LLP