M/s Krish Biotech Research Pvt. Ltd., 10th Main Road, Akkiyappa Garden, Mohan Kumar Nagar, Bangalore - 560022 (para 1 of the order calls it Krish Biotech Research Private Limited)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 110/2019, Date: 30-09-2019 (the order's… Dated **30.09.2019**

Q Questions Before the Authority

- Whether the activity of technical testing and analysis carried out by KBRPL is liable to GST under the CGST Act and KGST Act, 2017, read with the Rules and Notifications.
- Where the material for testing is sent from outside India to KBRPL, and KBRPL issues a certificate to a person not residing in India, whether it can be said that there is no supply by KBRPL under Section 7 of the CGST Act read with the KGST Act.
- Where the customer is not resident in India, sends material from outside India, and pays in convertible foreign currency, whether an invoice under Section 31 of the CGST Act read with the KGST Act can be issued without charging GST.
- Whether the testing and analysis services provided by KBRPL to customers located outside India can be regarded as export of services under Section 2(6) of the IGST Act, 2017.

F Facts

KBRPL, a private limited company not registered under GST, offers technical testing and analysis of chemicals to customers in India or abroad under a standard agreement. The customer supplies the test item along with its safety data sheet, certificate of analysis and test item data sheet, after which a study plan is approved and the testing is carried out, with the test item consumed in the process. Invoicing follows the agreement in three instalments of 40%, 30% and 30%, and overseas customers pay in convertible foreign currency. The company reported turnover of Rs.13,65,34,324 for FY 2018-19.

H Ruling

Q1: Is technical testing and analysis liable to GST?	****Yes. It is a supply of services** under the GST Acts.**	Decided on the basis that the activity is a supply in the course or furtherance of business for consideration. No rate or HSN is stated in the order.
Q2: Is there no supply where material comes from outside India and the certificate goes to a person outside India?	****No. It is a supply of services** for consideration to a person outside India.**	The authority held that the place from which goods are received, the recipient's location and the form of consideration are immaterial, so long as there is consideration and the supply is in the course of business.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Q3: Can an invoice be issued without GST where an overseas customer pays in convertible foreign currency?	****No. A tax invoice must be issued** for the supply.**	Required even where the recipient is located outside India and consideration is received in convertible foreign exchange. The authority relied on Section 31(2) CGST Act.
Q4: Is testing for overseas customers an export of services under Section 2(6) IGST Act?	****No ruling given.****	The authority held that deciding export status requires determining place of supply, which it is not authorised to decide.

The authority held that the testing and analysis activity is a supply of services under the GST Acts, including where the service is supplied for consideration to a person outside India. It held that a tax invoice must still be issued for such supply even where the recipient is outside India and pays in convertible foreign exchange. It declined to rule on whether the transaction is an export of services, because that question turns on place of supply, which it considered outside its authority.

R Reasoning

The authority examined the activity and found that KBRPL supplies services for consideration in the course of business, which brings it within the definition of supply in Section 7(1) of the CGST Act and KGST Act. It treated the source of the goods, the location of the recipient and the form of payment as immaterial to whether there is a supply. On invoicing, it relied on Section 31(2) of the CGST Act, which requires a registered person supplying a taxable service to issue a tax invoice unless exempted by notification. On export, it set out the five conditions in Section 2(6) of the IGST Act and Section 8 of the IGST Act, but stated that the place of supply question must be decided first and that it could not do so.

P Provisions Relied On

- Section 97 and Section 98(4) of the CGST Act, 2017 and KGST Act, 2017 (basis of the ruling)
- Section 7(1) of the CGST Act, 2017 and KGST Act, 2017 (definition of supply)
- Section 31(2) of the CGST Act, 2017 (tax invoice for taxable service)
- Section 2(6) of the IGST Act, 2017 (export of services, set out but not decided)
- Section 8 of the IGST Act, 2017, Explanation 1 (distinct person, referred to in the export conditions)

! For the Practitioner

A testing laboratory serving overseas clients can rely on this ruling for the point that testing for consideration is a supply of services and that a tax invoice is required even where the client is abroad and pays in foreign currency. The applicant's argument that Notification 12/2017-Central Tax (Rate) exempts such services was raised but the order does not decide it. The ruling does not settle whether the transaction is an export of services, so the zero-rating question must still be worked out separately under the place-of-supply rules.

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_110_2019_30.09.2019_kbrpl.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