M/s Karnataka State Electronics Development Corporation Limited (KEONICS), 2nd Floor, TTMC A Block, BMTC Complex, K H Road, Shanthinagar, Bengaluru – 560 027, GSTIN 29AABCK6661P1ZT

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 07 / 2020, Date: 10-03-2020 (handwritten… Dated **10.03.2020**

Q Questions Before the Authority

- Whether the street lighting activity under the Energy Performance Contract dated 05.12.2016 is a supply of goods or a supply of services under the CGST/KGST Act, 2017, and whether it can be sub-classified as a pure supply of service, a pure supply of goods, or a composite supply of goods and services being a works contract.
- What is the rate of tax applicable, and whether the applicant is entitled to the benefit of exemption under entry 3 or entry 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended; if not, what is the applicable rate.
- If the transaction is treated as a supply of services, what is the time of supply; whether KEONICS is liable to tax only once the energy saved is certified by the energy auditor; and whether the amount credited to the joint ESCROW account can be termed a 'receipt' when it is not under KEONICS's control until conditions are met.
- Without prejudice to the above, if the transaction is treated as a supply of goods, what is the time of supply; whether KEONICS is liable to tax only when possession and ownership of the goods pass to TMC at the end of the tenure; and what is the value of the taxable supply, given that it depends on energy savings certified by the energy auditor.

F Facts

KEONICS, a Karnataka State Government entity, operates a 7-year Energy Performance Contract (ESCO model, shared savings) with Thane Municipal Corporation for street lighting. Under it, KEONICS removes existing street lights, installs LED fixtures and smart feeder panels on about 12,000 existing poles, and operates and maintains them, while TMC keeps the poles and old lights. KEONICS is paid a monthly Energy Savings Fee equal to 90% of the energy saved at the applicable tariff, with a penalty if minimum savings are not achieved; the LED fittings are to be handed over to TMC at the end of the term.

H Ruling

Q1: Supply of goods or services; classification of the street lighting activity under the Energy Performance Contract	**Composite supply where the principal supply is supply of goods (LED street lights)**	Applicant's pure-service and works-contract characterisation was not accepted. Authority found more than two taxable supplies in conjunction, forming a composite supply under s.2(30); LED supply is principal, O&M is ancillary.

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

Q2: Rate of tax applicable and entitlement to exemption under entry 3 or 3A of Notification 12/2017-CTR	**12% (CGST 6% and SGST 6%) under Sl. No. 226 of Schedule II to Notification 1/2017-CTR (Rate); no exemption under entry 3 or 3A**	Authority held the impugned supply is not one of pure services, so entry 3 (and the composite-supply route under entry 3A) does not apply.
Q3: Time of supply if treated as services; liability on certification by energy auditor; ESCROW amount as 'receipt'	**Redundant, as the transaction is held to be a composite supply with goods as principal supply**	The ruling does not separately answer the ESCROW or energy-auditor certification points. The time of supply conclusion in para 4 applies to the composite supply.
Q4: Time of supply and value if treated as supply of goods (end-of-tenure transfer, value based on energy savings)	**Time of supply is the date of invoice; consideration equals the value of the invoice; GST rate 12%**	The authority rejected the applicant's argument that supply occurs at the end of the 7-year tenure when title passes to TMC. Para 18 relies on s.12(2)(a) and Explanation 1 to s.12(2).

The authority held that the street lighting activity is a composite supply in which the principal supply is goods, namely the LED street lights and fixtures, so the works-contract and pure-service characterisation put forward by the applicant was rejected. It fixed the rate at 12% (CGST 6% and SGST 6%) under Sl. No. 226 of Schedule II to Notification 1/2017-Central Tax (Rate), and held that the applicant is not entitled to exemption under entry 3 or entry 3A of Notification 12/2017. It also held that the time of supply is the date of invoice, and that the question on services versus goods time of supply was therefore redundant.

R Reasoning

The authority read the tender and contract terms and found that the LED supply, installation and O&M were naturally bundled, so the arrangement is a composite supply under s.2(30), with the principal supply being goods under s.2(90). It treated title passing at the end of the term under Schedule II, para 1(C) read with s.7 as confirming a supply of goods, but then found that consideration is paid monthly on energy savings, and that this consideration includes the value of the goods. On that basis it applied s.12(2)(a) and Explanation 1 to s.12(2) to fix the time of supply at the date of invoice, not at the end of the contract. It also held that Notification 12/2017-CTR, which covers composite supplies only where services are principal, does not apply, and placed the goods under Chapter heading 9405 at 6% CGST.

P Provisions Relied On

- CGST Act, 2017 s.2(30) (composite supply)
- CGST Act, 2017 s.2(33) (continuous supply of services), as cited by the applicant
- CGST Act, 2017 s.2(90) (principal supply)
- CGST Act, 2017 s.7 and Schedule II para 1(C) (transfer of title in goods under agreement)
- CGST Act, 2017 s.12(2)(a) and Explanation 1 to s.12(2) (time of supply of goods)

CGST Act, 2017 s.13 (time of supply of services), as cited by the applicant

CGST Act, 2017 s.15 (transaction value), as cited by the applicant

CGST Act, 2017 s.31 and s.31(5) (invoicing), as cited by the applicant

CGST Act, 2017 s.97 and s.98(4) (advance ruling)

CGST Rules, 2017 Rule 43 (life of capital goods) and Rule 47, as cited by the applicant

CGST Rules, 2017 Rule 104 (application for advance ruling)

Notification 12/2017-Central Tax (Rate) dated 28.06.2017, entry 3 and entry 3A (as cited by applicant; held not applicable)

Notification 1/2017-Central Tax (Rate) dated 28.06.2017, Schedule II, Sl. No. 226 (rate of 6% CGST for LED lamps and fixtur…

Article 243W of the Constitution of India (functions of municipalities, as cited by the applicant)

! For the Practitioner

This ruling is useful for any state or municipal energy-saving or street-lighting contract where the contractor supplies and then maintains LED equipment for a share of savings. It settles that such a bundle is a composite supply with goods as principal, so 12% applies and the pure-service exemption under entry 3 is unavailable. It also settles that the date of invoice governs time of supply, rather than the end-of-tenure transfer of title. It does not decide the ESCROW receipt question or the time of supply for a pure-services characterisation, which the authority left redundant. Practitioners should check the tender wording, since the result depends on the relative weight of goods and services in the contract.

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_07_2020_10.03.2020_ksedcl.pdf

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