

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU – 560 009**

**Advance Ruling No. KAR ADRG 24 / 2018**

**Dated : 25<sup>th</sup> October, 2018**

Present:

1. Sri. Harish Dharnia,  
Additional Commissioner of Central Tax,  
..... Member (Central Tax)
2. Dr. Ravi Prasad M.P.  
Joint Commissioner of  
Commercial Taxes  
..... Member (State Tax)

1.	Name and address of the applicant	M/s Nash Industries (I) Pvt Ltd., 236-237/2, 8 <sup>th</sup> Main Road, Peenya Industrial Area, 3 <sup>rd</sup> Phase, Bengaluru - 560058
2.	GSTIN or User ID	29AADCN9558Q1ZC
3.	Date of filing of Form GST ARA-01	13.03.2018
4.	Represented by	Sri S.Ramaswamy, Chief Commercial Officer
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, North West Commissionerate, Bengaluru
6.	Jurisdictional Authority – State	NA
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN SBIN18022900335814 dated 28.02.2018 2. Rs.5,000-00 under KGST Act vide CIN SBIN18032900038393 dated 09.03.2018

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS  
AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION  
98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Nash Industries (I) Pvt Ltd, (called as the ‘Applicant’ hereinafter), 236-237/2, 8<sup>th</sup> Main Road, Peenya Industrial Area, 3<sup>rd</sup> Phase, Bengaluru - 560058, having GSTIN number 29AADCN9558Q1ZC, has filed an application for Advance Ruling under Section 97 of CGST Act,2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

a) Whether the amortised cost of the tool to be added to arrive at the value of the goods supplied for the purpose of GST under Section 15 of the CGST Act read with rule 27 of CGST Rules.

3. The applicant furnishes some facts relevant to the stated activity:

a. The applicant states that he is in the business of manufacturing Sheet Metal Pressed Components and caters to various industries, ATM, printers etc, and is having multi-locational facilities in and around Bangalore.

b. He states that the earlier Central Excise Valuation Rules has similar provisions and it was held that the cost of amortization of the tool was to be added to the value of the goods removed for the purpose of payment of Excise duty. He has also submitted that he had tweeted to GST and it was replied as includible. This reply from the jurisdictional Assistant Commissioner of Central Tax asked to refer to the provisions of section 15 read with rule 27 of the CGST law. However, he stated that the customers are of the view that the amortization cost is not includible to arrive at the value for the purpose of GST unlike the erstwhile Central Excise Law. In the absence of clarity on the matter, the applicant preferred the ruling.

c. He stated that the it appears that the valuation provisions under the CGST Law is the same as that provided in the erstwhile Central Excise Law. Therefore, the applicant is of the view that the cost of amortization is to be added to the value of the goods supplied for the purpose of payment of GST. In this regard, he referred to the decision of the Hon'ble High Court in the case of TATA Johnson Controls Automotive Ltd v/s State of Maharashtra 2017 (7) GST GSTL 271 (BOM). He has also enclosed the working for the computation of GST.

- d. After the hearing, the applicant submitted that they are manufacturers of sheet metal pressed components and supply to industrial customers like Automotive, Banking Hardware, Power Protection, Alternate Energy, etc. The components were manufactured based on the drawing of the customer. To manufacture these components, the tools were designed and manufactured by the applicant. Such manufactured tools were billed to the customer, even though the tools are retained by the applicant for the manufacture of components. The payment was received by the applicant for the tool.
  
- e. He has stated that there are umpteen judgements of the Tribunal and Hon'ble Courts, wherein it is held that the moulds, tools, jigs, fixtures supplied free of cost or captively consumed are to be treated as additional money consideration to arrive at the value of excisable goods. In other words, the cost of amortization of the tools, jigs, fixtures, moulds, etc are to be added to arrive at the transaction value on which the Central Excise is paid. He has quoted section 15 of the CGST / SGST Act and rule 27 of the CGST / SGST Rules which reads as under:

Section 15

(2) The value of supply shall include:-

(a) . . . . .

(b) Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or service or both.

(c) . . . . .

(d) . . . . .

(e) . . . . .

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

Rule 27: Value of supply of goods or services where the consideration is not wholly in money:

(a) be the open market value of such supply

(b) If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply.

On plain reading of section 15 of the CGST / SGST Act, it says that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient is includible. He states that had the supplier procured it from outside, the cost of the tool would have formed part of the value of supply of the component. As per clause (b) of sub-section 2 of section 15, if the tool is provided free of cost to the supplier, the amortised cost of the tool would have formed part of the taxable supply.

(f) The applicant submitted that the components supplied to the recipient are tailor made (or made as per the specifications of the customer) and hence are not available in the open market and so there is no open market value of such supply.. In such case, recourse is to be taken to the sub-rule (b) of Rule 27 of the CGST / SGST Rules, according to which:

Value of taxable supply = consideration in money + Amount equivalent to consideration not in money.

He added that his customers paid the invoice value including excise duty on the amortised cost of the value of the tools under the erstwhile Central Excise Law. However, the same customers are not paying the GST amount charged on the supply of goods stating that the amortised cost of the tool is not includible under the GST.

g. The applicant has also referred to the following decisions:

1. TATA Johnson Controls Automotive Ltd v/s State of Maharashtra reported in 2017 (7) GSTL 271 (Bom)
2. GSTAMP Automotive India Pvt Ltd v/s Commissioner of Central Excise reported in 2017 GSTL 337 (Tri)
3. Lear Automotive India Pvt Ltd v/s Commissioner reported in 2014 ELT 65 (Tri)

#### 4. FINDINGS & DISCUSSION:

4.1 The transaction of the applicant is verified and found that there are two supplies involved in the entire activity. First the applicant, once he gets the order for specialized components, manufactures the tools specifically required for the job and invoices it to the recipients. This is the first supply. The applicant has to collect the tax as applicable on the tools and the recipient becomes the owner of such tools.

4.2 Later the recipient gives the tool free of cost to the applicant and the applicant uses the same for the manufacture of the components. Section 7(1) of CGST Act 2017 stipulates that 'Supply' shall be made for a consideration. Therefore, consideration is an essential element in supply. However Section 7(1)(c) specifies that the activities described in Schedule I shall be considered as 'Supply' even if there is no consideration involved. Schedule I lists out four such activities which shall amount to 'Supply' even if such an activity is carried out without any consideration. In the instant case the tools are business assets in the hands of the recipient as the applicant has raised invoices towards their manufacture / supply and received the due consideration from the recipient. Therefore entry number 1 of Schedule I is the closest entry to the issue at hand. As the tools are supplied by the recipient to the applicant for the limited purpose of manufacture / supply of components, the activity does not amount to permanent transfer of the business asset of the recipient. Therefore, the activity of free supply of tools by the recipient to the applicant does not amount to supply as defined in Section 7 of the CGST Act 2017.

4.3 Now we proceed to examine the provisions of Section 15 of the CGST / KGST Act 2017 in order to address the question raised by the applicant.

Section 15(1) of the said Acts provides as follows:

*“The value of a supply of goods or services or both shall be transaction value, which is the price actually paid or payable for the said supply of goods or services or both when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply”*

Therefore, the transaction value carried out at an arms length, constitutes the value of supply. Further, Section 15(2) of the CGST Act provides for the inclusion of several other related / relevant amounts in the value of taxable supply. We consider Section 15(2)(b) of CGST Act 2017 to be relevant to the facts of this case and analyze the same.

4.4 Section 15(2)(b) of the CGST Act 2017 reads as follows:

*“any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both”*

In the instant case the applicant and the recipient enter into an agreement where the applicant is required to ‘supply’ certain components. These components require specialized tools for their manufacture. The tools could be either manufactured by the applicant himself or they could get it manufactured by someone else or the recipient could supply them free of cost. In case the applicant procures the tools from a third party, then they would incur a cost and the cost could be included in the value of taxable supply to the recipient. There is no scope of any dispute in this situation about the fact that the cost of the tools is an essential element to be included in the cost of the component finally supplied by the applicant. This is also because without the tools the final component could not have been manufactured. However, when the first or third situation prevails, then the

applicant has not spent any amount in respect of the tools. Nevertheless the applicant could not have manufactured the components without the tool. Here the cost the tool is borne by the recipient of the supply whereas the same should have been borne by the applicant, as evident from the situation discussed above, (where the applicant procures the tool from a third party).

Therefore we are of the considered opinion that the facts and circumstances of the transaction put forth by the applicant invite the play of Section 15(2)(b) of the CGST Act 2017 in their transaction.

5. In view of the foregoing, we rule as follows

**R U L I N G**

The amortised cost of tools which are re-supplied back to the applicant free of cost shall be added to the value of the components while calculating the value of the components supplied as per the Section 15 of the CGST / SGST / IGST Act 2017.

**(Harish Dharnia)**  
**Member**

**(Dr.Ravi Prasad.M.P.)**  
**Member**

Place : Bengaluru,  
Date : 25.10.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru.

The Asst. Commissioner, LVO - , Bengaluru.

Office Folder.