

BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)

Present:

Shri Vipin Chandra (Member)
Shri Amit Gupta (Member)

In

Application No: 02/2019-20

Advance Ruling No. 03/2019-20

Dated 12th June, 2019

1	Applicant	HARMILAP MEDIA (P) LTD.
2	Jurisdictional Officer	None
3	Present for the Applicant	Shri Ankit Gupta (CA) and Daman Preet (CA)
4	Concerned Officer	Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun
5	Date of Personal Hearing	2-5-2019

Note:- Under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

This is an application under sub-section (1) of Section 97 of the CGST/SGST Act, 2017 (hereinafter referred to as Act) and the rules made thereunder filed by M/s. Harmilap Media (P) Ltd., 2nd Floor C-34, Meedo Plaza, Rajpur Road, Dehradun seeking an advance ruling on following issues :-

(a) applicability of GST rate on selling of space/ time for advertisement in print media in case of advertising companies;

(b) applicability of GST rate if advertising company/ agency sells unit of Space in print media to client and designing/ composing is being done by advertising company/agency without charging separately in the bill for designing, etc., to client;

(c) selling of space/ time for advertisement in print media by advertising companies is a pure service or otherwise. If yes, whether said pure service is exempted from payment of GST vide Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 when advertising agency is raising bill to Local Authority or otherwise; and

(d) if exemption is available to local authority then said exemption is also available to advertising companies or not.

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. As per the said sub-section (2) of Section 97 of the CGST/SGST Act, 2017 advance ruling can be sought by an applicant in respect of :-

(a) Classification of any goods or services or both,

(b) Applicability of a notification issued under the provisions of this Act,

(c) Determination of time and value of supply of goods or services or both,

(d) Admissibility of input tax credit of tax paid or deemed to have been paid,

(e) Determination of the liability to pay tax on any goods or services or both,

(f) Whether the applicant is required to be registered?

(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

4. In the present case applicant has sought advance ruling on applicability of GST rate and classification of supply of goods/services in case of sale of space in print media. Therefore, in terms of said section 97(2)(b) & (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

5. Accordingly opportunity of personal hearing was granted to the applicant on 2-5-2019. Shri Ankit Gupta (CA) and Daman Preet (CA), on behalf of the applicant appeared for personal hearing on the said date and submitted documents describing therein exact nature of work being undertaken. Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun, concerned officer appointed by the State Authority, also present during the hearing proceedings.

6. From the documents submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AAECK8145P1Z1. They are an Advertising Company/Agency engaged in selling unit of space in various print media to diversified clients on DAVP approved rate/DIPR

approved rates or rates as per open market. Before proceeding in the present case, we would first go submissions filed by the applicant and the same is summarized as under :-

(i) Selling of space for advertisement in print media is leviable to GST @ 5%. If the advertisement agency works on principal to principal basis, that is; buys space from the newspaper and sells such space for advertisement to clients on its own account, that is, as a principal, it would be liable to pay GST @ 5% on the full amount charged by advertisement agency from the client. They are currently charging GST @ 5% to its clients as per the above provisions.

(ii) Supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of manpower for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a Governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services. In the case of "Sale of space for advertisement in print media" it includes sale of space on print media which forms material component of this supply. Material in the form of Newspaper is supplied for the unit space booked by the client. Based on the definition of Pure Service and considering the above fact "Sale of space for advertisement in print media/' cannot be considered as Pure Service.

(iii) Further Notification No. 12/2017 has exempted "Pure Services" (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

(iv) In this case, agency make some bills for Sale of Space for Advertisement in Print Media to some Local Authorities like Municipal Corporations in relation to some activities which are exempt under Notification No. 12/2017 as mentioned in paragraph above.

(v) Referring to the above notification, a case study of South Delhi Municipal Corporation (hereinafter referred to as SDMC) has been discussed. SDMC has denied paying GST as it considers Sale of Space

for Advertisement in Print Media as a pure service falling under the ambit of above notification. In support of the same they have received a copy of letter from SDMC bearing No. 354/90/2018-TRU, dated 3-5-2018 issued by Department of Revenue, Ministry of Finance, Government of India on the above-mentioned subject. Ministry of Finance has clarified that as per Serial No. 3 of Notification No. 12/2017-Central Tax (Rate), SDMC is not liable to pay the GST on Health Education Campaigns through DAVP approved agencies.

(vi) They further stated that since the material component (newspaper) forms a major part of the value of supply, hence the said notification is not applicable to sale of space for Advertisement in Print Media.

(vii) Therefore they seek Advance Ruling as regard to the applicability of GST on the aforementioned proposed billing whether they fall under the ambit of exemption under Notification No. 12/2017 or otherwise.

7. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. Now we proceed by taking the issue one by one :-

(A) Applicability of GST rate on selling of space/ time for advertisement in print media in case of advertising companies.

(A.1) In this context we find that selling of space/time for advertisement in print media is mentioned at Entry No. 21 under Heading 9983 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 which attract GST @ 5% [2.5% CGST + 2.5% SGST].

(B) Applicability of GST rate if advertising company/agency sells unit of space in print media to client and designing/composing is being done by advertising company/ agency without charging separately in the bill for designing, etc., to client.

(B.1) In this context, we find that there are two slabs of GST rate prescribed, in respect of supply in question, at Entry No. 21 under Heading 9983 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as under :

Entry No.	Chapter, Section or Heading	S. No.	Description of service	GST rate
21	9983	i	Selling of space/time for advertisement in print media.	5%
		ii	Other professional, technical and business services other	18%

			than (i) above	
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(B.2) On perusal of said notification, we find that selling of space for advertisements in print media and other related services would attract 5 and 18 per cent. GST respectively, depending on the terms of the contract between the newspaper, advertisement agency and the client. A few cases in this regard [are] discussed below :-

(a) In a case where advertisement agency works on principal to principal basis means publication charge GST @ 5% on net rate (after discount/commission or without discount/ commission). In such case publication may or may not mention the name of client at its own bill. Further agency bill to client for total amount of space at DAUP/DIPR rates or rates as per open market, it would attract GST @ 5% on the total amount charged by the advertising company/agency. That is, buys space from the newspaper and sells such space for advertisement to its clients on its own account, it would attract GST @ 5% on the total amount charged by advertisement agency from its clients.

(b) In another model, where agency sells space for advertisement to its clients on commission/trade discount basis, and/or invoice is also raised by agency, and client pays directly to publication for the total amount and publication pays commission/trade discount to agency then it would be liable to GST @ 5% as agency has sold space for advertisement to client.

(c) If the advertisement agency sells space for advertisement as an agent of client on commission/trade discount basis, and invoice is also raised by agency to its client and client pays directly to publication for the net amount and to agency for its charges separately, it would be liable for GST @ 5%.

(d) If the advertisement agency supplies any service other than selling of space for advertisement, such as designing or drafting the advertisement and such supply is not a part of any composite supply, the same would be liable to GST @ 18% and if such supplies are part of any composite supply, the rate applicable for the principal supply shall apply.

(e) In some cases, advertising agency/company have some deals on volume/ value basis with publication and on achieving the target, advertising company/ agency gets some incentive etc. In this case incentive will be charged @ 18%.

(B.3) Now coming to the question for decision wherein the applicant has stated that designing, etc., are integral part of supply in question

i.e. selling of space in print media. The relevant legal provisions in this regard are reproduced as under :-

(i) Section 2(30) of the Act, ibid "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

(ii) Section 2(90) of the Act, ibid "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

[(iii)] Section 8 of the Act, ibid : The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :-

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) _____

(B.4) In this situation we observe that there is involvement of two supply of services (i) selling of space in print media and (ii) designing/composing of the advertisement. Accordingly the same falls under the definition of "composite supply" inasmuch as two taxable supplies of services are naturally bundled and supplied in conjunction with each other in the ordinary course of business. Now the question arises which one of them is a principal supply. It is obvious that "selling of space in print media" constitutes the predominant element of a composite supply and designing/ composition of the advertisement is ancillary to the said composite supply. Accordingly we observe that composite supply comprises of selling of space in print media and designing/composing of the advertisement, will attract GST @ 5% inasmuch as "selling of space in print media" is a principal supply which attract GST @ 5%.

(C) Selling of space/time for advertisement in print media by advertising companies is a pure service or otherwise. If yes, whether said pure service is exempted from payment of GST vide Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 when advertising agency is raising bill to Local Authority or otherwise.

(C.1) In this context we find that "Pure Services" are mentioned under Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 and exemption to pure services are admissible subject to the fulfilment of certain conditions laid down in the said notification and the relevant portion of the same is reproduced as under :

G.S.R (E). - In exercise of the powers conferred by sub-section (1) of Section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of Section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject. the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely :-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

(C.2) On perusal of aforesaid notification, we find that services supplied without involving of goods is a pure service and to avail exemption under said notification following conditions are required to be fulfilled :-

(i) pure service must be supplied to the Central Government, State Government or Union territory or local authority or a Governmental authority and

(ii) supply of pure service is related to an activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

(C.3) On perusal of record we find that applicant argued that "sale of space for advertisement in print media" invariably includes supply of material in the form of newspaper and the material component forms a major part of the value of said supply. Thus said supply does not fall in the category of "Pure Services".

(C.4) We find that in terms of Section 7(1) of the Act, read with Schedule I appended to the Act, 'supply' includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. We observe that supply is the term replaced for the term sale; no scope has been left for any confusion and the definition includes every term which shall be coined as sale. Even the supply which is made or agreed to be made without a consideration will also amount to sale.

(C.5) In the instant issue we find that the applicant in their submissions vehemently argued that the bills issued to the clients is invariably inclusive of cost of material as newspaper itself is a form of material and advertisement rates are based on circulation of newspapers. Thus if such is a case, then the service in question is not a "pure service" in terms of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 (as amended from time to time) as it involves the supply of goods also, therefore in such circumstances the said supply is out of the ambit of said notification.

(D) If exemption is available in terms of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, then said exemption is also available to advertising companies.

(D.1) The Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 (as amended from time to time) is not available to the service provider i.e. advertising agency as discussed supra.

RULING

8. In view of the above discussion and findings we hold as under :-

(i) Selling of space for advertisement in print media by advertising company/ agency shall attract GST @ 5% [2.5% CGST + 2.5% SGST] in case of advertising companies/ agencies in all cases. However Volume incentives/ value incentives are part of commission and cannot be treated as sale of space in print media and therefore incentive will be charged @ 18%.

(ii) Composite supply comprises of selling of space in print media and designing/composing of the advertisement, shall attract GST @ 5% [2.5% CGST + 2.5% SGST] inasmuch as "selling of space in print media" is a principal supply which attract GST @ 5% [2.5% CGST + 2.5% SGST] as on date. Advertisement company/agency sells unit of space in print media to client and designing/composing is being done by advertising company /agency without charging separately in the bill for designing, etc., to client. Such case is a case of composite supply and in such case "selling of space in print media" is a principal supply. Hence it will attract GST @ 5% [2.5% CGST + 2.5% SGST] as on date.

(iii) Supply of service viz. "Sale of Space for Advertisement in Print Media" is not a "Pure Service" and the exemption to said services are not admissible in terms of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 (as amended from time to time).

(iv) The exemption from GST is also not available to the applicant in terms of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 (as amended from time to time).

VIPIN CHANDRA (MEMBER) AMIT GUPTA (Member)