

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

**Advance Ruling No. KAR ADRG 57/2020
Date : 16-12-2020**

Present:

1. Dr. Ravi Prasad M.P.
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri. Mashhood ur Rehman Farooqui,
Joint Commissioner of Central Tax, Member (Central Tax)

| | | |
|----|---|--|
| 1. | Name and address of the applicant | Sri. V. Mohandas Pai, Prop. M/s Dheeraj Enterprises, I Floor, #245/2, 5 th Cross, 5 th Block, 3 rd Phase, Banashankari 3 rd Stage, Bengaluru-560085. |
| 2. | GSTIN or User ID | 29AJZPP9276F1Z2 |
| 3. | Date of filing of Form GST ARA-01 | 22 nd September 2020 |
| 4. | Represented by | Sri. V R Balasubramani, Advocate & Authorized Representative |
| 5. | Jurisdictional Authority - Centre | The Principal Commissioner of Central Tax, Bangalore West Commissionerate. |
| 6. | Jurisdictional Authority - State | LGSTO-60, Bangalore |
| 7. | Whether the payment of fees discharged and if yes, the amount and CIN | Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN BKID20122900205681 dated.17.12.2020 and Rs. 5,000/- under KGST Act vide CIN BKID20092900308745 dated.22.09.2020. |

**ORDER UNDER SECTION 98(2) OF THE CGST ACT, 2017
& UNDER 98(2) OF THE KGST ACT, 2017**

1. Sri. V. Mohandas Pai, Prop. M/s Dheeraj Enterprises, (called as the 'Applicant' hereinafter), I Floor, #245/2, 5th Cross, 5th Block, 3rd Phase, Banashankari 3rd Stage, Bengaluru-560085. having GSTIN 29AJZPP9276F1Z2, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST 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/- each under the CGST Act and the KGST Act.



Dheeraj Enterprises



2. The applicant is a Film distributor, registered under GST, for provision of Leasing and Licensing for the right to broadcast service and shows original films which include sound recordings.

3. The Jurisdictional authority of the applicant issued a GST DRC 01A dated 10.09.2020, in file C.No. IV/06/191/2019 BW AE-V, demanding differential tax of Rs.4,82,30,200/- owing to suppression of taxable value and wrong classification resorted to by the applicant for the period May 2018 to March 2020. Hence the applicant filed the instant application seeking advance ruling in respect of the following question, in relation to the classification of their service.

"Determination of correct classification of Licensing services for the right to broadcast and show original films, sound recordings, Radio & Television Programmes etc.,"

4. The jurisdictional officer vide letter C.No.IV/06191/2019 BW AE-V dated 30.09.2020, in response to personal hearing intimation letter dated 7-10-2020, reported that an offence case bearing OR No.20/2019-20 dated 11.09.2020 has been booked by the Anti Evasion wing against the applicant, following a search conducted at the registered premises of the applicant under Section 67(2) of the CGST Act 2017 and observed the following issues during the course of investigation.

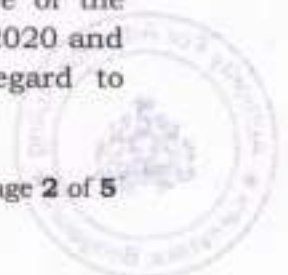
- a) Suppression of actual taxable value by way of under reporting film collection / share amount.
- b) Incorrect self assessment of GST in respect of their service i.e. distribution of films by way of misclassification under SAC 9973 instead of SAC 999614 with an intent to pay lesser rate of tax of 12% instead of 18%.

The Jurisdictional officer further reported that the final quantification of the demand was communicated to the applicant vide GST-DRC-01A dated 10.09.2020 prior to issuance of Show Cause Notice under Section 74 of the CGST Act 2017 and hence the issues are pending for proceedings u/s 74 & thus the instant application is not maintainable in terms of first proviso to Section 98(2) of the CGST Act 2017.

5. Sri. V R Balasubramani, Advocate & Authorized Representative of the applicant (AR), in response to personal hearing intimation letter dated 7-10-2020, vide letter dated 9-10-2020 submitted that the officer who has issued GST-DRC-01A dated 10-09-2020 is also Member(Central) of this authority; in terms of the maxim "*Nemo iudex in causa sua*" the bench of this authority need to be reconstituted and requested to postpone the personal hearing.

PERSONAL HEARING: / PROCEEDINGS HELD ON 15.10.2020 & 15.12.2020

6. Sri. V R Balasubramani, Advocate & Authorized Representative of the applicant (AR) appeared for personal hearing proceedings held on 15.10.2020 and apprised the facts furnished in the application. Further with regard to



admissibility of the instant application, the AR submitted that the instant application is about classification of their service where the issue/s pending are not related to the classification but for alleged suppression of facts and short payment of tax and hence the instant application is maintainable.

7. The AR vide letter dated 19.10.2020, with regard to maintainability of the instant application submitted that the issue is whether the question raised in the application is pending or decided in any proceedings or not; GST DRC 01A is merely an intimation and not the Show Cause Notice and hence can't be construed as pending; the issue relevant to the DRC 01A is not about the classification of their service but is about suppression of value of their service and hence the issue raised in the question of the applicant is not pending and thus the application is maintainable.

8. The AR, in support of their contentions, quoted the dictionary meanings of the words 'Pending', 'Decided' and 'Proceeding'. Further **Pending**, in general parlance & as per dictionary means **not yet decided or settled or awaiting conclusion or confirmation**. Show Cause Notice has not been issued by the Revenue, proposing for change in classification and hence it can't be construed as the classification issue is pending. An issue which is undeniable/ indisputable/ positive / certain / pronounced / definite / sure / indubitable / resolved / unhesitating / unwavering is to be considered as '**Decided**'. In this case the DRC-01A is not followed by the Show Cause Notice enclosed by all relevant documents and hence it can't be claimed that the issue is pending and therefore when the proceedings itself has not been started, the question of decision is not relevant. Further DRC-01A is only an intimation rather than a Show Cause Notice and therefore intimation letter do not have the effect of commencing a proceeding.

9. The Asst. Commissioner(AE), Bangalore West Commissionerate, vide letter dated 27.10.2020, submitted that the applicant herein stated that they classify their services under SAC 9973, where as the correct classification is 9966 and the applicable rate is 18% in terms of Sl.No.34 (vi) of Notification No.11/2017-Central Tax (Rate) dated 2.06.2017 and hence the demand for differential duty. Therefore the issue is pending in proceedings under Section 74 of the CGST Act 2017.

10. An additional opportunity of personal hearing was given on 15.12.2020 and the AR Sri. V R Balasubramani, Advocate appeared on behalf of the applicant and Sri. Anubhaw Kumar, Superintendent of Central Tax, Bangalore West Commissionerate, Bangalore appeared on behalf of the Jurisdictional Office. The AR submitted during the hearing that he does not object to the Bench deciding the issue of admissibility of the application before the Advance Authority. Both the representatives reiterated their contentions with regard to maintainability of the application.



11. DISCUSSION & FINDINGS:

11.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the issues involved & relevant facts having a bearing on the questions in respect of which advance ruling is sought by the applicant.

11.2 At the outset, we would like to state that the provisions of both the CGST Act, 2017 and the KGST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

11.3 The issue before us is the admissibility / maintainability of the instant application and the said admissibility is governed by the first proviso to Section 98(2) of the CGST Act 2017, which reads as under:

"The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of applicant under any provisions of this Act".

Thus the conditions to be considered before admission of application, on the basis of above proviso are as under:

- i. Whether the question raised is pending or decided in any proceedings
- ii. Whether the question raised is pending or decided in the case of applicant
- iii. Whether the question raised is pending or decided under any provisions of this Act.

11.4 We examine the records and observe that the instant application has been filed on 22.09.2020 and the question raised there in is about the classification of the services being provided by the applicant. It is an undisputed fact that a search, of applicant's registered premises, was conducted by the Superintendent of Central Tax, Anti Evasion, Bangalore West Commissionerate under authorization issued by the competent authority on 30.08.2019, a Statement was recorded on 31.08.2019, an offence case was booked on 11.09.2020 and DRC-01A dated 09.07.2020 was issued on the issue of suppression of taxable value. Further, a summon dated 03.09.2020 was issued seeking clarification on the question of classification. The applicant vide letter dated 08.09.2020 to the Department sought a notice on the issue and informed that they will take up the matter of classification with Karnataka Film Chamber of Commerce and CBIC. It is pertinent to mention here that the DRC-01A dated 10.09.2020 clearly specified the grounds of quantification out of which one issue is the **"Wrong classification resorted under self assessment by the applicant, under SAC 9973 instead of SAC 9996 14"**. Thus it is



clearly evident that the issue of classification of the services provided by the applicant was under investigation as evident from DRC-1A dated 10.09.2020.

11.5 Rule 142[1A] of the CGST Rules 2017, as amended, stipulates that the proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A. Further the said form is prescribed one and contains a reference of the case proceedings, which clearly indicates that proceedings have been initiated and are not concluded. Thus it proves that the case proceedings are pending.


11.6 The issue raised in the instant application and the issue pending under the proceedings are one and same i.e. classification of the services provided by the applicant. Thus first proviso to Section 98(2) of the CGST Act 2017 is squarely applicable to the instant case, as all the conditions therein are fulfilled.

12. In view of the foregoing, we pass the following:

RULING

The application is rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017.


16/12/2020
(Dr. Ravi Prasad M.P.)
Member
MEMBER
Karnataka Advance Ruling Authority
Place : Bengaluru
Date : 16-12-2020
Bengaluru - 560 009


17.12.2020
(Mashhood ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to :

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

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

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

The Asst. Commissioner, LGSTO-60, Bengaluru

Enclosure Folder

Dhish Enterprises

