

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

Advance Ruling No. KAR ADRG 15 / 2022

Dated: 17-05-2022

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. T. Kiran Reddy
Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. AURIGA RESEARCH PRIVATE LIMITED, No.136, 6 th Cross, 2 nd Stage, Yeshwanthpur Industrial Suburb, Bengaluru-560 022.
2.	GSTIN or User ID	29AABCH1202M1ZR
3.	Date of filing of Form GST ARA-01	01-12-2021
4.	Represented by	Sri Sourav Arora, Director
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Bengaluru North West GST Commissionerate, North West Division-1, Range-ANWD1
6.	Jurisdictional Authority - State	ACCT, LGSTO-050, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Liability Ledger Reference No.DC2911210028828 Dated 09-11-2021

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Auriga Research Private Limited, (hereinafter referred to as 'The applicant'), No.136, 6th Cross, 2nd Stage, Yeshwanthpur, Bengaluru-560022, having GSTIN 29AABCH1202M1ZR have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The Applicant is providing Covid-19 Testing facility for all the passengers travelling by air, whether domestic or international.

3. The applicant has sought advance ruling in respect of the following question:

- i. *Whether Goods and Service Tax ("GST") will be levied on Revenue Sharing invoices raised by one party on to another party wherein the outward supply of services is exempt in nature.*

4. **Admissibility of the application:** The question is about the "determination of the liability to pay tax on any goods or services or both" and hence is admissible under Section 97(2) (e) of the CGST Act 2017.

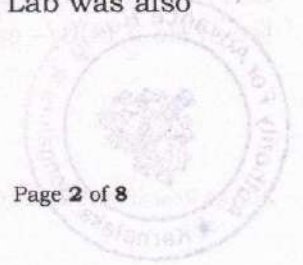
5. **BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant has stated that it is a Company registered under Companies Act, 1956 (now Companies Act, 2013) and having its registered office at 4/9, Kirti Nagar, Industrial Area, New Delhi.

5.2 The applicant has stated that they are providing services for food testing, pharmaceuticals testing, herbal testing, Covid testing etc. for domestic as well as foreign clients. Being a service provider, they are also registered under the Goods and Services Tax Act, 2017 in various States in India.

5.3 The applicant has stated that due to sudden surge in Covid-19 cases all over the world, India being no exception, there was a need for establishing testing facilities / labs which are capable enough to test the existence of the virus in one's body. Therefore, they decided for providing such facilities to the patients who believed that they were infected with corona virus.

5.4 The applicant has stated that for establishing a Covid Lab, they approached Bangalore International Airport Limited, (hereinafter referred to as "BIAL") a company registered under Companies Act, 2013, wherein the applicant and BIAL entered into Leave and License Agreement dated 01.12.2020. Based upon which the BIAL rented out its space to the applicant for a sum of Rs.16,568/- per month for providing Covid testing facilities. The rent is paid by the applicant on monthly basis after deduction of Tax at Source ("TDS") at the rates applicable under section 194-I of the Income Tax Act 1961. On the tax invoice generated by BIAL, it is specifically mentioned as License Fee. The applicant states that on 22nd September 2021 another space was taken on rent from BIAL at a monthly rent of Rs.15,776/- (increased to Rs.23,664/- per month). The applicant states that he has also entered into an Agreement dated 23rd September 2020 for Operating a Food Testing Lab (later on Covid Testing Lab) with BIAL for obtaining a space on rent for a sum of Rs.50,000/- per month (now 52,500/- per month). Later on it was agreed between the parties and the space allocated for Food Testing Lab was also converted into Covid Testing Lab at the same terms and conditions.



5.5 The applicant has stated that they have entered into an agreement with BIAL for operation of Covid Testing Facility on 2nd September 2021. As per this particular agreement the BIAL will get certain percentage of revenue based upon the turnover of the applicant. The slabs for calculating the revenue share amount were agreed upon and mentioned in the said agreement.

5.6 The applicant has stated that apart from the rent charged from them, BIAL has also made a Revenue Sharing arrangement wherein the applicant will pay BIAL a share on the gross revenue earned during the month.

5.7 The applicant has stated that the revenue earned by them every month is variable in nature. Therefore, the applicant and BIAL have mutually decided the slabs / slab rates on which the revenue will be shared between both the parties, to avoid any future confusion and litigation.

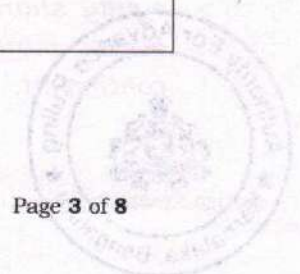
5.8 The applicant states that BIAL will raise tax invoices for both rent and revenue sharing separately on them, as per the payment terms mutually decided by the parties. As per the mutually agreed payment terms between BIAL and the applicant, it can be construed that both rent and revenue sharing clauses are separate in nature. Hence separate tax invoices are generated.

5.9 The applicant states that BIAL has raised the tax invoices as per mutually agreed payment terms between BIAL and applicant and charged GST @ 18% on the value of its revenue share. The tax invoices are being generated by BIAL bearing SAC 996761 i.e., Airport Operation Services.

6. Applicant's Interpretation of Law:

6.1 The applicant is of the view that they are providing Covid Testing facilities at BIAL and such activities are exempt from levy of GST vide Notification No.12/2017-Central Tax (Rate), dated 28th June, 2017 as such activities are covered under Sl.No.74 Heading 9993 which specifically exempts services by way of healthcare services. Hence, these transactions are specifically exempted from such levy. The relevant portion of the notification is extracted hereunder for ease of reference:

Sl.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent.)	Condition
(1)	(2)	(3)	(4)	(5)
74	Heading 9993	Services by way of-(a) health care services by a clinical establishment, an authorized medical practitioner or paramedics;(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	NIL	NIL



6.2 The applicant submits that, the agreed terms and conditions between them and BIAL are amply clear in nature, which categorically indicates that a specific amount will be paid as a License Fee which is all together separate from revenue share. Therefore, BIAL has a claim in a specified amount which will be recovered from APPLICANT as revenue share by raising monthly tax invoices. It is pertinent from the arrangement between the parties i.e., BIAL and the applicant that BIAL has a beneficial interest in the revenue which is separate from the License Fee, which will be generated in due course of business conducted by them.

6.3 The applicant has relied on the order of the Hon'ble Advance Ruling Authority Tamil Nadu in its ruling [2019] 107 taxmann.com 276 (AAR-Tamil Nadu) / [2019] 75 GST 628 (AAR-Tamil Nadu) / [2019] 27 GSTL 32 (AAR-Tamil Nadu) dated 21.05.2019, has taken a view that profit sharing will be considered as an actionable claim and hence there will be no levy of GST on such transactions. The said claim will be covered under Schedule III of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and will neither be considered as supply of goods nor supply of services. Hence, it is out of the ambit of GST and no GST will be levied on the said transactions. The relevant portion of the said ruling is extracted hereunder for ease of reference:

"6.2..... The applicant has a claim to the specified amounts in the event of occurrence of the specified strategic sale or IPO. His claim is contingent on such events occurring. The applicant has a beneficial interest in the profits arising out of such a strategic sale or IPO. It can be said that the Profit Sharing Agreement is an 'actionable claim'.

"6.3. Section 2(1) of CGST Act states:

2. In this Act, unless the context otherwise requires, -

(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;

Section 3 of Transfer of Property Act, 1882 state:

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

In this case, the Profit Sharing Agreement gives the applicant a claim to the beneficial interest in the profits on the event of a strategic sale where at least 51% of paid-up Equity Share capital of the Company is sold at a price not less than Rs.75 or an initial public offering where the mid-point of the price band as per the red-herring prospectus is not less than Rs.75 per equity share and subsequent listing on Stock Exchange. Either of these events may not occur or both may not. In that case the claim is only contingent. However, actionable claims as defined in Transfer of Property



Act can be contingent. The movable property which is the amount of profit on such contingent event occurring are currently not in possession of the claimant i.e. applicant. Further, as per Clause 11 of the Profit Sharing Agreement, the agreement is governed by and interpreted in accordance with laws of India and the Courts of Mumbai, India shall have exclusive jurisdiction in respect of all matters arising from the agreement and the enforcement of any award of Arbitration may be sought in any Court. Therefore, it is clear that Civil Courts recognize and can provide grounds for relief if and when the applicant makes a claim to such beneficial interest in future profits. Therefore, it is clear that this transaction between the applicant and the shareholders is an 'actionable claim' under Section 2(1) of CGST read with Section 3 of the Transfer of Property Act, 1882."

6.4 The applicant is of the view that as per ruling passed by the Hon'ble Advance Ruling Authority Tamil Nadu, it is amply clear that BIAL has a beneficial interest in the revenue generated by the applicant, which is existent in nature as per the above discussed definition of actionable claim as per the relevant laws discussed above. Therefore, they are not liable to pay GST on revenue sharing tax invoices issued upon them by BIAL.

6.5 The applicant also submits that in M/s. PVS Multiplex India Private Limited, Hon'ble, CESTAT on 29th August, 2017 held that there is no dispute of the act that the appellant have been screening films in the multiplex on revenue sharing basis, which the undisputed findings recorded by Ld. Commissioner in the impugned order. Hence no service tax is liable to be paid by the applicant.

6.6 Considering the facts of the case and the above discussions, the applicant is of the view that no GST is to be charged on the Revenue Share Agreement.

PERSONAL HEARING / PROCEEDINGS HELD ON 10-02-2022

7. Shri Sourav Arora, Director and Duly Authorised Representative appeared for personal hearing proceedings held on 10-02-2022 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by the applicant and also their submissions made during the time of hearing.



10. The applicant states that they have entered into an agreement with BIAL for operation of Covid Testing Facility on 2nd September 2021. As per this agreement, the BIAL will get certain percentage of revenue based upon the turnover of the applicant.

11. The applicant states that BIAL raises tax invoices for both rent and revenue sharing separately on them. BIAL raises the tax invoices as per mutually agreed payment terms between BIAL and the applicant and charges GST @ 18% on the value of its revenue share. The tax invoices are being generated by BIAL bearing SAC 996761 i.e., Airport Operation Services. The applicant has also submitted the tax invoices raised (SAC 998592) by them towards each customer for conducting COVID (RTPCR) test.

12. Section 31 of CGST Act 2017 deals with 'Tax Invoice' which is reproduced below:

Section 31. Tax invoice.-

(1) A registered person **supplying** taxable goods shall, before or at the time of,-

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person **supplying** taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

¹**Provided** that the Government may, on the recommendations of the Council, by notification,-

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which-

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(ii) tax invoice may not be issued.]

13. Subsection 105 of section 2 of CGST Act 2017 defines 'supplier' as below:

"Supplier" in relation to any goods or services or both, shall mean the person **supplying the said goods or services** or both and shall include



an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

The applicant states that BIAL raises tax invoices for revenue sharing on them. As per the definition of 'Supplier' as per section 2(105) mentioned supra and as per Section 31 which talks about tax invoice, BIAL becomes the supplier since, BIAL is issuing tax invoices to the applicant.

14. Now we proceed to examine the admissibility / maintainability of the instant application before going into the merits of the application. We invite reference to Section 95(a) of the CGST Act 2017, which defines "advance ruling" to mean

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;

Further, Section 95 (c) of the CGST Act 2017 defines "Applicant" as any person registered or desirous of obtaining registration under the said Act.

15. It could be easily inferred from above that any person registered or desirous of obtaining registration under CGST Act 2017 can seek advance ruling only in relation to the supply of goods or services or both being undertaken or proposed to be undertaken.

16. In the instant case, we observe that Auriga Research Private Limited, who have filed the application, is not a supplier. Thus the instant application is not admissible and liable for rejection in terms of Section 98(2) of the CGST Act 2017.

17. In view of the foregoing, we pass the following

RULING

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


(Dr. M.P. Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru - 560 009
Date: 17-05-2022

To
The Applicant

Auriga Research Private Limited


(T. Kiran Reddy)
Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of of Central Taxes, Bengaluru North West GST Commissionerate, North West Division-1, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-50, Bengaluru.
5. Office Folder.

RELINQUISH

