

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR/11/2019-20

DATE:31-01-2020

Sl. No	Name and address of the appellant	M/s Pattabi Enterprises Plot No. 70/71, Hootagalli Industrial Area, Mysore – 570 018.
1	GSTIN or User ID	29AAIFP8459L1ZB
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 46/2019 Dated: 17 Sept 2019
3	Date of filing appeal	05-11-2019
4	Represented by	Sri M.S. Nagaraj, Advocate and DAR
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Mysore Commissionerate
6	Jurisdictional Authority- State	LGSTO- 200 Mysore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20,000/- made vide CIN NO. SBIN19112900014499 Dated. 04-11-2019

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, 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.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Pattabi Enterprises Plot No. 70/71, Hootagalli Industrial Area, Mysore – 570 018. (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 46/2019 Dated: 17 Sept 2019.

Brief Facts of the case:

3. Appellant is a partnership firm having GSTIN: 29AAIFP8459L1ZB engaged in the manufacture and supply of cartons, corrugated boxes, paper folders, sleeves, other packaging containers, labels, tags, pamphlets, booklets, brochures, leaflets and similar printed matter falling under HSN Code 48 and 49.

4. The appellant filed an application for Advance Ruling under section 98 of the CGST Act, 2017 and KGST Act, 2017 on the following questions:

- (i) Whether 'Access Card' printed and supplied by the Appellant based on the contents provided by their customers is rightly classifiable under HSN code 4901 10 20 under the description brochures, leaflets and similar printed matter whether or not in single sheet?
- (ii) Whether 'Access card' printed and supplied by the appellant based on the contents provided by their customers attracts GST rate of 5% in case of IGST and 2.5% CGST and 2.5% SGST in case of Intra state supplies vide Notification No. 1/2017-CT (Rate) Sl.No.201 & 1/2017-IT (Rate) Sl.No.201 dated 28.06.2017 and SGST/UTGST Notifications.

5. It was decided by the Karnataka Advance Ruling Authority vide Ruling No. KAR/ADRG 46/2019 dated 17th Sept 2019 that the supply of 'access cards', and similar material printed by the applicant with the contents supplied by the recipient of supply are classifiable as a supply of service under SAC 9989 and liable to tax under CGST at 9%, KGST at 9% and at 18% under the IGST Act.

6. Aggrieved by the said Ruling of the Authority (herein after referred to as 'impugned order'), the Appellant has filed an appeal under section 100 of the CGST Act, 2017 and KGST Act, 2017 on the following grounds.

7. Appellant submitted that Authority merely relied on CBIC Circular vide No. 11/11/2017- GST dated 20.10.2017 to decide the transaction instead of detailed examination

of nature of activities undertaken by the appellant. The Authority of Advance ruling held that since there is involvement of rights to stay in temple precincts attached to the card and other involvement of privileges and can only be issued by the recipient of supply of Access Cards, the same is to be treated as composite supply with the supply of service being the principal supply. In this regard appellant submitted that Authority had ignored the fact that the transaction to be considered for determining the taxability of supply of printed access card' is between the Appellant and their customer M/s Trilok Security Systems India Pvt. Ltd.,(herein after referred as Trilok) and not the transaction between Trilok and the subsequent third party. Appellant is supplying the printed access cards to Trilok and Trilok in turn provides the service by using printed access cards.

8. Appellant further submitted that conditions stipulated in the contract is condition for goods and not for service. If the Appellant does not supply the agreed quantity of access card in stipulated time, Trilok can enforce for non-supply of items and not for non-supply of service. Therefore, the essential aspect and substance in the instant case is supply of goods and not service as is envisaged in the advance ruling. Therefore, the advance ruling requires set aside.

9. Appellant submitted that before determining the applicable rate of tax on any supply, one has to ascertain whether it is supply of goods or services. Thereafter, relevant HSN/ SAC would be determined in accordance with the scheme of classification under GST, so that the correct rate of tax could be determined. In the instant case, before determining the rate of tax applicable on supply of Access cards it should be decided first that the supply of Access card whether it is supply of goods or service.

10. In this regard Appellant submitted that the term "goods" is defined in section 2(52) of the CGST Act, 2017 means

every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Therefore, every movable property is 'goods' under GST except money and securities. However, the term 'movable property' is not defined in the GST law hence finding recourse to Section 3(36) of the General Clauses Act, 1897 which defines the term 'movable property' to mean property of every description, except immovable property. The term 'immovable property' is defined in section 3(26) of the General Clauses Act, 1897 to include land, benefits

to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

11. In view of the above definitions Appellant submitted that the 'Access cards' supplied are neither land nor benefits arising out of land nor things attached to the earth. Further, the 'access cards' are also not money and securities. Therefore, 'access cards' supplied are 'goods' under GST. Further Appellant referred to Article 366(12) of the Constitution of India which defines the term 'goods' to include all materials, commodities and articles. In support of this the appellant relied on the decision of the Constitution Bench of the Supreme Court in the case of **Tata Consultancy Services v. State of Andhra Pradesh reported in [(2005) 1 SCC 308 = 2004 (178) E.L.T. 22 (S.C.)]**, where the Honourable Supreme Court in relation to sale of software held that

“in our view, the term “goods” as used in Article 366(12) of the Constitution and as defined under the said Act is very wide and include all types of movable properties, whether those: properties be tangible or intangible.

The term ‘all materials, articles and. Commodities’ includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed, etc. The software programs have all these attributes.”

Therefore Appellant submitted that the 'access cards' in the instant case are goods/ materials which are capable of abstraction, being possessed, stored and transferred. 'Access cards' have specific use as they allow entry to a temple.

12. Further, Appellant submitted that the 'Access cards' distributed fits in the definition for 'leaflets' as provided by

(i) P Ramanatha Aiyar's The Major Law Lexicon defines '**leaflet**' includes any written information.

(ii) The Oxford Dictionary of English (Third Edition) defines the noun 'leaflet' as a **printed sheet of paper containing information or advertising and usually distributed free.**

(iii) The Cambridge Advanced Learner's Dictionary (Third Edition) defines 'leaflet' as a **piece of paper which gives you information or advertises something.**

13. Appellant further submitted that in terms of Chapter 49 in the First Schedule to the Customs Tariff there is a specific heading 4901 which covers pamphlets, booklets, brochures, leaflets and similar printed matter. Entry no. 201 of Schedule I to Notification. No. 01/2017-CT(R) covers "Brochures, leaflets and similar printed matter, whether or not in single sheets" under Chapter Heading 4901 as taxable at 2.5% CGST and 2.5% KGST. Further, they relied on the HSN Explanatory Notes to Heading 4901 which provides as under:

This heading covers virtually all publications and printed matter, illustrated or not, with the exception of publicity matter and products more specifically covered by other headings of the Chapter (particularly heading 4902, 4903 or 4904). It includes: (B) Brochures, pamphlets and leaflets, whether consisting of several sheets of reading matter fastened together (e.g., stapled), or of unfastened sheets, or of single sheets.

14. In this regard Appellant relied on the following case laws as under.

14.1. The Apex court in the case of **Gujarat Perstorp Electronic Ltd 2005 (186) E.L.T. 532 (S.C.)** had held printed material falling under chapter heading 4901 of Customs Tariff Act, 1975 as goods.

14.2. In the case of **Metagraphs Pvt. Ltd. cited [1996 (88) ELT 630 (SC)]** the Apex court held a similar view in interpreting labels as follows

"Printed aluminium labels are "products of printing industry" since printing of the labels is not incidental to its use but primary as it communicates to the customer about the product and this serves a definite purpose - Printing of carton by itself does not bring the carton into existence hence not a product of printing industry though printing is undertaken".

14.3. In the case of **CCE v. Fitrite Packers 2015 (324) ELT 625 (SC)**, in relation to printing of duty paid GI paper where printing was done on jumbo rolls as per design and specifications of customers with logo and name of product in colourful form, **the Supreme Court held that printing is not merely a value addition, but resulting into a paper with distinct character and use of its own which it did not bear earlier.**

14.4. The CESTAT Delhi held that printing of identity cards which are smart cards merit classification under heading 4901 of the Central Excise Tariff and not under heading 8542 or 8523, in case of **S.T.J. Electricals v. Commr. 2017 (357) E.L.T. 910 (Tri.-Del.)**. Similarly, CBE&C Circular No. 195/20/96-CX dated 3rd April 1996 provides that photo-identity cards are goods which merit classification under heading 4901.

14.5. It was held in **Fitrite Packers vs Collector of Cen. Ex., Bombay (1999 (108) E.L.T. 680 (Tribunal)** that printing of plastic films with logos, designs etc. classifiable under sub-heading 4901.90 of Central Excise Tariff Act, 1985 as product of printing industry.

14.6. In the case of **JJ Enterprises Vs Commissioner of Central Excise 2013 (295) E.L.T. 324 (Tri. - Del.)** where it was stated that, printing on the sheets conveys some message or information. Printed sheets have to be treated as products of printing industry and hence the process of printing would amount to manufacture and are classifiable under Chapter 49 of Central Excise Tariff.

14.7. It was similarly held in final order in **Studio Printall (New Delhi) Pvt. Ltd. Vs C.C.Ex., Delhi-I [2004 (172) E.L.T. 402 (Tri. - Del.)]** that Stickers, produced by printing on various materials, brought into existence by printing, hence, eligible for exemption as a product of printing industry following ratio of Apex Court's decision as reported in Metagraphs at supra.

15. Further Appellant submitted that classification of goods is governed by First Schedule to the Customs Tariff Act, 1975 which is meant for import of goods. Import of printed material is specifically classified under Chapter Heading 4901 as goods; that when such access cards are imported by any person, the Customs has been classifying it under Heading 4901. Similarly, when the customer places an order for such access card to any printing industry located abroad, the same would be imported under heading 4901. Further, VAT was levied on the sale of Access Cards at the rate of 5.5%. Therefore, the intention of the legislature all along has been to classify the 'access cards' as supply of goods and the same treatment should be applicable under GST as well. They submitted that since supply of access cards are covered under the definition of 'goods' under Section 2(52), the same cannot be considered as 'service'. Further, printing of 'access cards' is not covered under any of the service activities mentioned under Schedule II to the CGST Act, 2017. Printing of access cards could not also be said to be job

work service unless the goods for printing like paper, ink etc are also supplied by the customer, which does not happen in this case. Therefore the supply of access cards which is “goods” is not to be treated as supply of service under GST.

16. Appellant submitted that section 2(30) of the CGST Act, 2017 provides for the definition of composite supply as follows

“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.”

17. Further, Appellant referred to Section 8(a) of the CGST Act, 2017 which provides that to determine tax liability of composite supply comprising two or more supplies, one of which is a principal supply, the tax as applicable to the principal supply shall apply. ‘Principal supply’ is defined in section 2(90) of the CGST Act, 2017 to mean 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. Therefore Appellant submitted that in the instant case the essence of activity is supply of printed access cards. Thus the predominant element is that of goods. They further submitted that the substance and not the form of the contract is material in determining the nature of transaction; that the substance of the transaction between Appellant and the customer is to supply the Access card which is moveable property i.e goods under GST; that the cost of material constitutes 74% of the total cost of production of ‘access cards’. Therefore, dominant element in the total cost of production of ‘access cards’ is the cost of goods. They submitted a cost accountant’s certificate to this effect.

18. Appellant further submitted that chapter heading 9989 covers activities relating to publishing of books and other reproduction activity. The activity of supply of printed access card is not covered under any of the descriptions mentioned in the chapter heading 9989. Therefore, the basis on which the analysis was made by the advance ruling authority is contrary to the explanatory note to scheme of classification of services. The nature of activities covered under the heading 9989 are basically in the nature of job work. The appellant is making access cards complete in all respects according to the specifications of the customer and selling the same to them. Hence access cards are goods and not service.

19. Appellant mentioned that the Government has issued Circular no.11/11/2017-GST dated 20th October 2017 to provide clarification on taxability of printing contracts under GST. Para no. 4 of the circular provides that in case of books, pamphlets, brochures, annual reports, the supply of printing service is the principal supply, whereas para no. 5 provides that in case of envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. the principal supply is supply of goods. All the products specified in para 4 and para 5 are goods of chapter 48 or 49. However the circular does not provide clarity on taxability of 'printed access cards' or 'leaflets'. The intention of the buyer in all the cases is to obtain the hard-bound movable property in the form of goods. End use is based on the function of the goods. Therefore, such differentiation in para 4 and 5 is not in line with the principles of classification. This brings about ambiguity in the Circular No. 11/11/2017-GST which is not in line with the Supreme Court decision of **Metagraphs ibid**. The Apex Court in case of **Kalyani Packaging Industry v. UoI, cited [2004 (168) E.L.T. 145 (SC)]** held that departmental clarification giving different interpretation of a phrase than the Supreme Court is not binding. Courts/Tribunals cannot ignore a judgment of Supreme Court and follow circulars of Board. Further, it is settled law that clarifications and circulars issued by Central and State Governments representing merely their understanding of statutory provisions are not binding on Court. Circular contrary to statutory provisions has no existence in law as held by the Supreme Court in **Ratan Melting & Wire Industries cited [2008 (231) E.L.T. 22 (SC)]**.

20. Appellant further submitted that even though as per Section 103 of the CGST Act, 2017 rulings given by the Authority for Advance ruling are applicable only for the Appellant, the rationale can however be adopted in similar matters and hence reliance is placed on the following rulings;

- a. In case of **Macro Media Digital imaging Pvt. Ltd. cited 2018-TIOL-62-AAR-GST**, where the appellant was manufacturing printed trade advertising materials like banner, flex, etc., the Telangana State AAR held it to be a 'supply of goods' classified under heading 4911.
- b. The Telangana State AAR, in the case of **M/s. K L Hi-tech Secure Print Ltd. cited 2018-TIOL-176-AAR-GST** held that printing of cheque books, where the cost of printing papers and inks are borne by the printer, is a supply of goods.

Therefore, Appellant submitted that the ruling given by the Authority for Advance Ruling must be reconsidered and order passed by the authority of advance ruling is required to be modified to extent aggrieved by the appellant

PERSONAL HEARING

21. The appellant was called for a personal hearing on 10-10-2019 as well as on 10/01/2020 and was represented by the Sri. M.S. Nagaraj, Advocate and DAR of M/s Pattabi Enterprises. During the hearing the appellant reiterated the grounds of appeal and argued that Access card' printed and supplied by the appellant are classifiable as goods under HSN code 4901 10 20 under the description brochures, leaflets and attracts GST rate of 5% in case of IGST and 2.5% CGST and 2.5% SGST in case of Intra state supplies.

DISCUSSIONS AND FINDINGS

22. We have gone through the records of the case and taken into account the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing. The issue before us is to decide whether the activity of printing and supply of 'Access card' by the appellant based on the contents provided by their customers is an activity of supply of goods or supply of service. The classification and the GST rate applicable will depend on the determination of the nature of activity i.e whether it is a supply of goods or supply of service.

23. The undisputed facts are that the Appellant is supplying "Access Cards" to their customer M/s Trilok Security Systems India Pvt Ltd who provide Mass Queue Management System services at various pilgrim destinations in India. M/s Trilok Security Systems India Pvt Ltd use the "Access cards" to manage the large pilgrim crowds at pilgrimage destinations like Tirumala Tirupati Devasthanams, Shri Saibaba temple, Shirdi, Sree Mata Vaishnavo Devi Shrine, Haridwar, Rishikesh, etc. The "Access cards" are given to the pilgrims free of cost and they contain the pilgrim's digital photo and thumb impression along with information regarding distance to temple, precaution to be taken by pilgrims who are old, sick, physically weak, first aid centres and certain restrictions for movement of pilgrims, are printed. The contents/ creatives to be printed on the Access Card is provided by M/s Trilok Security Systems India Pvt Ltd to the Appellant. All the physical inputs required for printing such as paper, machinery, ink etc., belongs to the Appellant and only the intangible input of creative content to be printed

is supplied by the customer. Appellant uses 210 GSM of size 56 x 71 Cms Art Card for printing the content using the different colours of ink Like GEOS G Yellow, Magenta, Cyan and Black. The Cards are cut to the required sizes with perforation and supplied to the customer.

24. In the above factual background, it is seen that the activity undertaken by the Appellant is one which brings into existence a distinct item i.e “Access Card” which is used by the recipient to distribute to the pilgrims. This card is a bar coded multi-colour no-tear card. Printing is an activity which results in the emergence of the “Access card”. Printing is an activity which is ancillary to the emergence of the Access card. The printing activity undertaken by the Appellant is for the purpose of bringing into existence the Access card. The Access card is put to further use by the recipient M/s Trilok Security Systems in the performance of the Mass Queue Management System services. The intention of the Appellant’s activity is to bring into existence an Access card for which printing is ancillary. The resultant product “Access card” is therefore a product of the printing industry.

25. The lower Authority has relied on the CBIC Circular No 11/11/2017-GST dated 20.10.2017 to hold that the activity undertaken by the Appellant is a supply of service. The Circular is reproduced here below:

Requests have been received to clarify whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) or supply of services falling under heading 9989 of the scheme of classification of services annexed to notification No. 11/2017-CT(R).

2. In the above context, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

3. Principal supply has been defined in Section 2(90) of the Central Goods and Services Tax Act as 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.

4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

26. The lower authority has relied on Para 4 of the said Circular to hold that since the content is supplied by the recipient who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the Appellant, the principal supply is the printing service and hence the activity is classifiable as a supply of service. We disagree with the reasoning by the lower Authority. Undoubtedly the contents and the creatives for the Access card have been supplied by the recipient to the Appellant and there is no dispute that the Appellant has used his own paper and inks and machinery to carry out the activity. However, what has been lost sight of is the fact that the activity of printing brings into existence a specific new product known in trade and common parlance as "Access card". Printing in this case is ancillary to the main activity of making "Access cards". The printing is a service rendered by the Appellant to himself in order to execute the supply of "Access cards". In other words, the principal supply in the case of the Appellant is not the printing service but a supply of the Access cards which is a product emerging out of the printing activity. Therefore, we

are of the opinion that the provisions of Para 5 of the Board's Circular will apply in this case and the printing and supply of Access cards by the Appellant is a supply of goods. We therefore set aside the ruling given by the lower Authority.

27. Having held that the supply of Access cards is a supply of goods, we come to the question of classification of the access cards and its applicable rate of GST. Chapter 49 of the Customs Tariff covers products of the printing industry. Heading 4901 of the Customs Tariff covers *Printed Books, Brochures, Leaflets and similar printed matter, whether or not in single sheets*. The entry 4901 of the Customs Tariff is reproduced below:

4901	PRINTED BOOKS, BROCHURES, LEAFLETS AND SIMILAR PRINTED MATTER, WHETHER OR NOT IN SINGLE SHEETS
4901 10	- In single sheets, whether or not folded:
4901 10 10	--- Printed books
4901 10 20	--- Pamphlets, booklets, brochures, leaflets and similar printed matter
	- Other
4901 91 00	-- Dictionaries and encyclopaedias, and serial instalments thereof
4901 99 00	-- Other

28. The Access cards being printed cards in single sheets are classifiable under sub-heading 4901 10 20 under the category of pamphlets, booklets, brochures, leaflets and similar printed matter. They will fall under the description of the term 'leaflet' under 4901 10 20. In the GST rate Notification No 01/2017 CT (R) dated 28.06.2017, "*Brochures, leaflets and similar printed matter, whether or not in single sheets* are covered under entry Sl.No 201 of Schedule I with rate of 2.5% CGST and 2.5% SGST.

29. In view of the above discussion, we pass the following order

ORDER


We set aside the ruling no NO.KAR ADRG 46/2019 dated 17/09/2019 passed by the Advance Ruling Authority and answer the questions of the Appellant as follows:

- (i) The 'Access Card' printed and supplied by the Appellant based on the contents provided by their customers is a supply of goods and is rightly classifiable under HSN code 4901 10 20 under the description brochures, leaflets and similar printed matter whether or not in single sheet.

(ii) The 'Access card' printed and supplied by the appellant attracts GST rate of 5% in case of inter-state supplies and 2.5% CGST and 2.5% SGST in case of Intra state supplies vide Sl.No 201 of Schedule I to Notification No. 1/2017-CT (Rate) & 1/2017-IT (Rate) both dated 28.06.2017.


31/1/20
(D.P.NAGENDRAKUMAR)

Member
Karnataka Appellate Authority
For Advance Ruling


31.01.2020
(M.S. SRIKAR)

Member
Karnataka Appellate Authority
For Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
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