

**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-14-D /2019-20

DATE:10-02-2020

Sl. No	Name and address of the appellant	M/s Informatics Publishing Ltd, No 194, RV Road, Basavanagudi, Bangalore 560004
1	GSTIN or User ID	GSTIN: 29AACCT4896Q1Z8 User ID: 291800000224ARS
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 74/2019 Dated: 23rd Sept 2019
3	Date of filing appeal	12-11-2019
4	Represented by	Shri. Dayanand K & Ms Suprita S Shetty, Chartered Accountants, M/s Vishnu Daya& Co, LLP
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore South Commissionerate.
6	Jurisdictional Authority- State	LGSTO-100, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No CNRB19112900021481 dated 12.11.2019 for Rs 20,000/-

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 *parimateria* 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 Informatics Publishing Ltd, No 194, RV Road, Basavanagudi, Bangalore 560004 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 74/2019 dated: 23rd Sept 2019.

Brief Facts of the case:

3. The appellant is in the business of supplying online journals. They own an online educational journal portal called J-Gate, which is a platform for various educational journals. The appellant enters into contracts with publishers for listing their scholarly journal on J-Gate. The platform qualifies as the world's largest database of scholarly journal articles. J-Gate includes full text access to over 25000 journals.

4. J-Gate indexes and aggregates articles from the peer-reviewed scholarly journals in all discipline sets such as Physical science and Life Sciences, engineering and Technology, Health Sciences, Economics, Laws, Social Sciences, etc. required by higher education institutions. J-Gate platform indexes millions of articles from several thousand online journals of interest to educational institutions. The journals are updated on a monthly or bi-monthly or quarterly basis. Being the platform for various scholarly and scientific journals, many educational institutions subscribe to J-Gate to have access to hundreds and thousands of educational journals.

5. The appellant charges the subscribing institutions an annual subscription fee, depending on the disciplines from which the journals are required to be accessed.

6. Exemption Notification No 12/2017-CT(R) was amended vide Notification No 02/2018 CT (R) dated 25th Jan 2018 to insert "Supply of online educational journals or periodicals" to entry Sl.No 66 and exempt the same from the levy of GST when they are supplied to educational institutions (other than those providing 'pre-school education' and education up to higher secondary school and education as part of an approved vocational education course.'). In view of the said amendment, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

Whether the supply of services in the nature of subscription to the J-Gate by the educational institutions is eligible for exemption from GST under Notification No.2/2018- Central Tax (Rate)?

7. The AAR vide its order dated 23rd September 2019 gave the following ruling:

The providing of access to the online content by the applicant to their users is not a transaction covered under sub-item (v) of item (b) of serial no.66 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018- Central Tax (Rate) dated 25.01.2018, but is a transaction covered under SAC 998431 and liable to tax at 9% CGST under the entry no.22 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 and at 9% under the KGST Act.

8. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

8.1 The ruling is given on classification of service and rate of tax applicable which was not sought for in the application for advance ruling; that by giving a ruling on questions not asked, the authorities have overridden the provisions of Section 98(4) of the CGST Act, 2017 as it only gives the Authority to pronounce a ruling on the questions specified in the application; that if a ruling is given on a question not asked, it would amount to imposing a view on an assessee without considering his side or his views which is against the principles of natural justice; that in the instant case the ruling is given on questions not specified in the application and hence, the entire ruling is liable to be set aside.

8.2. The Appellant submitted that the AAR in its ruling held that the activity of the appellant does not amount to "Supply of online educational journals and periodicals" as they do not own the data and the Appellants are not publishing any online journals. However, both owning the data and publishing is not a requirement by law. They submitted that the exemption entry simply reads "Supply of online educational journals and periodicals"; that it does not specify that the data in the journal should be owned by the supplier. Neither does it specify that the exemption is available only if the journal is supplied by the publisher; that there are no provisions under GST laws wherein supplier is necessitated to own the data or publish the data in order to consider the transaction as supply of online educational journal.

They submitted that the Authority has misled itself with these preconditions without any legal basis and hence the ruling is required to be set aside.

8.3. They submitted that the lower authority has arrived at a conclusion that the appellant is only aggregating the data and not supplying e-journals; that the authority does not appear to have understood the nature of the transactions of the Appellant. They submitted that all the articles published in a particular journal listed in J-Gate are made available in the J-Gate portal; that a subscriber to J-Gate will be able to access all the articles in a particular journal if that journal is part of the study area subscribed by him; that subscribers do not subscribe to a set of specific articles but to all journals in a specific study area. They submitted that although they create a database of summary of articles, summary is not the only thing which is delivered through J-Gate; that the main supply is the journal; that metadata or summary is only an additional feature made available with the journals so that the access to journal is gained with convenience.

8.4. They submitted that the lower Authority has wrongly interpreted many aspects of their transaction in holding that the appellant is an aggregator of the various articles from various journals and that the appellant's domain is to aggregate and supply educational material which has been published in journals. They submitted that the appellant is not an aggregator of various articles from various journals; that they supply the journal "as such" in the portal; that they only arrange the journal in the portal under particular category along with a short summary to enable easy search of journals. As all the journals are scholarly in nature, it has been made available in the portal under the broad category; that they only do the categorization of journals as such and publish the entire journal in one place. As regards the lower Authority's finding that they create a database for reference, they submitted that they only segregate the journals into specific categories. Within a journal there are many articles but they are not segregated; that when a subscriber subscribes to a particular journal, they get the complete journal with all the articles; that they only maintain a database from which the supply of journal is made.

8.5. They argued that the exemption notification does not state that the journal should be published and supplied by the publisher or author himself and therefore the finding of the lower Authority on this aspect is not correct. They submitted that the exemption is given only if the educational journals are supplied online to educational institutions and research organisations other than primary, secondary and vocational educational institutions. They

submitted that they enter into contracts with the publishers to load the e-journals to the J-Gate server and to make it available to its customers; that they do not connect their customers with the publishers; that even when the contract with the publisher terminates, they continue to retain the data received till date of termination so that they can continue to fulfill their obligations to their customers. Therefore, they are making available the e-journals to their customers and not connecting the customers to the publisher.

8.6. The Appellant submitted that the lower Authority has misconstrued the aspect of metadata and wrongly held that metadata is only gist and is not the complete journal and hence is only a database. In this regard they submitted that providing metadata in the portal is only a business strategy and not a supply as such; that by subscribing to the full text journal, people can read the metadata freely; that they collect subscription fees for the journals and not for the metadata; that metadata is only an additional feature of the portal which has nothing to do with the journal subscription; that even in the case of restricted access journals, the process will be the same except the fact that to access such journals additional requirement of subscribing to specific publisher exists; that the subscription to the publisher is made through the appellant and only after the additional requirement is fulfilled, the appellant makes the journal available to the customer. They submitted that merely because there is an additional requirement of payout to the publishers, it cannot be said that the appellant is not supplying such journals.

8.7. They further submitted that the Fitment Committee had suggested to the GST Council that online educational journals and periodicals may be exempted since all degree awarding institutions are exempt from GST and the GST on the online journals is an added cost to the institutions especially the Govt institutions; that the GST Council had agreed to the said suggestion and it was with this intention that the exemption notification 12/2017 CT (R) was amended vide Notf No 02/2018 CT (R) to provide for exemption to supply of online educational journals and periodicals when the same are supplied to educational institutions (other than institutions providing pre-school education and education up to higher secondary school or equivalent and vocational educational courses). In view of the above, the appellant pleaded that they fit the criteria for availing the exemption and the order of the lower authority denying them the benefit of the exemption may be set aside.

8.8. The appellant also filed an application for condonation of delay in filing this appeal. They submitted that the Advance Ruling order of the lower Authority dated 23rd September

2019 was received by them on 3rd October 2019. As per Section 100 of the CGST Act, they are required to file the appeal within a period of 30 days from the date of receipt of the advance ruling order; that the due date for filing the appeal was 2nd November 2019 but they were able to file the appeal only on 12th November 2019 after a delay of 10 days. In this connection they stated that the delay occurred on account of not being aware of the procedure to file the appeal and hence they requested that the delay be condoned.

PERSONAL HEARING

13. The appellant was called for a personal hearing on 10th Jan 2020 but the same was postponed to 31st Jan 2020 on their request. The appellant was represented by Shri. Dayanand K & Ms Suprita S Shetty, Chartered Accountants, M/s Vishnu Daya & Co, LLP who reiterated the submission made in their grounds of appeal. They also stressed on the fact that classification of the service provided by them was never a question posed to the lower Authority in their application for advance ruling and hence the ruling given on the classification is required to be set aside.

DISCUSSIONS AND FINDINGS

14. We have gone through the records of the case and considered 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 regarding the Appellants eligibility to exemption in terms of entry Sl.No 66 of Notification No 12/2017 CT (R) dated 28-06-2018 as amended vide Notification No 02/2018 CT (R) dated 25-01-2018.

15. Before we proceed with the main issue, we find that there has been a delay in filing the present appeal. The order of the Authority of Advance Ruling dated 23.09.2019 was admittedly received by the appellant on 3rd October 2019. The statutory period for filing the appeal (which is 30 days from the date of receipt of the order) expired on 2nd November 2019. However, the appeal was filed before this Appellate Authority on 12th November 2019 after a delay of 10 days from the statutory due date. The appellant has sought for condonation of delay in filing the appeal on the grounds of ignorance of the appeal procedure in Advance Rulings.

16. The provisions of Section 100(2) of the CGST Act mandates that an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, in terms of the proviso to Section 100(2) of the said Act, the Appellate Authority is empowered to allow the appeal to be presented within a further period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days.

17. In the instant case, the appeal filed against the Advance Ruling order dated 23.09.2019 is evidently delayed by 10 days. The appellant, has satisfactorily explained the reason for the delay in filing the appeal. In the interest of justice, and considering the fact that the delay is within the condonable powers of this Authority, we are inclined to condone the delay in filing this appeal and proceed with a decision on the merits of this case.

18. Reverting to the issue at hand, the appellant had approached the lower Authority for a ruling on whether the subscriptions made by educational institutions to the J-Gate portal is exempted from GST in terms of entry Sl.No 66 of the Notification No 12/2017 CT (R) dated 28-06-2018 as amended vide Notification No 02/2018 CT (R) dated 25-01-2018. The relevant entry of the exemption Notification is reproduced below for ease of reference: The relevant portion of the entry is highlighted.

66	Heading 9992	<p>Services provided –</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;</p> <p>(b) to an educational institution, by way of,-</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) security or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of</p>	NIL	NIL
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		<p>examination by, such institution;</p> <p>(v) supply of online educational journals or periodicals;</p> <p>Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p> <p>Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-</p> <p>(i) pre-school education and education up to higher secondary school or equivalent; or</p> <p>(ii) education as a part of an approved vocational education course.</p>		
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19. From the above it is seen that services provided to an educational institution by way of supply of online journals and periodicals is exempted from the levy of GST with effect from 25th Jan 2018. However, the exemption is not available when the supply of online journals and periodicals is to institutions providing pre-school education, education up to higher secondary school or its equivalent and vocational educational institutions. Pursuant to this exemption coming into force, the Appellant applied for an advance ruling whether they are eligible for the benefit of sub-clause (v) of clause (b) of entry No 66 of Notification No 12/2017 Central Tax (Rate) dt 28-06-2017 as amended.

20. The Advance Ruling Authority examined the matter and held that the appellant carries out the aggregation of various articles from various journals and creates a database for reference; that the appellant through their portal was only providing access to the articles published in various journals and papers to its subscribers; that the subscriber was given access to the metadata of the articles in the journals and access to the full article in the journal will be given when the subscriber makes an additional payment to the journal publisher. The lower Authority therefore held that since the appellant is only providing a gateway to the data aggregated by them, they are not supplying the journals to the educational institutions and are not eligible for the exemption under clause (v) to entry Sl.No 66 of Notification No 12/2017 Central Tax (Rate) dt 28-06-2017 as amended by Notification No 02/2018 Central Tax (Rate) dt 25-01-2018. The appellant has contested these findings of the lower Authority.

21. We have examined the matter in detail and have also gone through the Content Licensing Agreements entered between the Appellant and the Publishers which have been placed before us. **J-Gate** (the portal hosted by the appellant) is presented as a website which provides subscription-based seamless access to millions of journals published across the world. A general understanding of journals and periodicals in the context of education is that a journal is a scholarly publication containing articles written by researchers, professors and other experts. Journals focus on a specific discipline or field of study. Unlike newspapers and magazines, journals are intended for an academic or technical audience, not general readers. All the journals are segregated on the J-Gate portal based on the area of study (like Engineering, technology, social and management sciences, arts, basic sciences, etc) and are indexed. The Appellant enters into a Contract with publishers for hosting the journals on their portal.

22. Journals on the J-Gate portal are of two types:

(a) Open Access Journals and

(b) Restricted Access Journals

Open Access Journals can be read by the J-Gate subscribers with just the J-Gate subscription. The open access journal is made available on the J-Gate platform by the publisher in terms of the agreement with the Appellant. The publisher provides the content to be hosted on the appellant's portal and grants the appellant permission to display the content and make available the content in searchable format to the appellant's customers. Such open access journals will be available for subscribers even after termination of the agreement with the publisher. The subscriber only pays the subscription amount to the Appellant and is given complete access to the journals on the J-Gate platform during the period of subscription. In this case there is an online supply of journals by the appellant to the educational institution who is the subscriber.

23. In the case of restricted access journals, the subscriber to the J-Gate portal is provided with the details of the journal in summary (metadata) and if the subscriber wants to have access to the full journal, he will be required to pay additional fees to the publishers. In this mode of access, the publisher agrees to host the journal on the J-Gate portal but they want to place restrictions on how their journals are used. Hence to get the full access to the journal, the subscriber of the J-Gate portal will, in addition to the portal subscription charges, also

have to pay additional fees to the publisher. On payment of the additional fees, the journal is accessed from the J-Gate portal only. In this case also, it is the appellant who supplies the journals to the subscriber after the latter meets with the requirements.

24. The lower Authority has held that the appellants do not publish the journals, they are not owners of the data, they do not create the data but are only the gateway to the journals. The lower Authority has also held that since the subscriber has to make further payment to the publisher for the metadata, the appellant is only acting as a gateway to the data. We disagree with this view. The intention of the exemption notification is to exempt the "supply of online journals to educational institutions". The notification does not require that the supply is made by one who owns or publishes the journal. The only requirement is that the supply should be in the online mode and it should be to certain kinds of educational institutions. J-Gate is no doubt aggregating the journals from different publishers in one common platform. But the supply of the journals to the end user ie the subscriber is made by the appellant through their platform J-Gate. Further, the platform is also designed to assist the user to easily search for articles in the subscribed journals. For this purpose, it is essential to have machine-readable metadata files for all articles. Metadata means "data about data" and is defined as the data providing information about one or more aspects of the data; it is used to summarize basic information about data which can make tracking and working with specific data easier. The metadata for an article is information concerning the article, for example, bibliographic data such as authorship, article title, copyright year, and publication date; descriptive material such as keywords and abstracts; or any article identifying numbers. The article metadata is not part of the body text or graphics of the article proper, but serves to identify or describe the article. Metadata is used by those who host a database for making their data easily accessible to the use. In other words, providing metadata is only a process used in online journal publishing. It only provides the subscriber a summary of the article they are interested in. The subscriber can get free access to the full text of the article if the same is an open access journal. If the journal is a restricted access journal, then the subscriber will have to pay additional fees to the publisher to gain full access. As already mentioned, the payment of additional fees to the publisher is only to protect the interests of the publisher in how the journal contents are being used. The journal is made available to the subscriber only through the J-Gate platform even after payment of additional fees to the publisher. Therefore, in our opinion, it is the appellant who make the supply of the online journals to educational institutions.

25. The lower Authority has held that the transaction of supply of information by the appellant is a supply of service covered under Heading 998431 whose description is "Online text based information such as online books, newspapers, periodicals, directories and the like". It has also been held that the service is taxable to GST at 18% under entry No 22 of Notification No 11/2017 CT (R) dated 28-06-2017. The Appellant has contended that this finding of the lower Authority is beyond the scope of the ruling which has been sought for and is hence not sustainable. We agree on this point. The question before the lower Authority was regarding their eligibility to the exemption notification. There was no question regarding classification and rate of tax of the supply made by the appellant. We hold that the lower Authority has gone beyond the question on which a ruling was sought for and hence we set aside the finding on the classification and rate of tax of the supply.

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


ORDER

The Advance Ruling order No. KAR/ADRG 74/2019 dated 23rd Sept 2019 is set aside in toto and the appeal filed by M/s Informatics Publishing Ltd, No 194, RV Road, Basavanagudi, Bangalore 560004 is allowed. The question on which the ruling has been sought for is answered as below:

The supply of services in the nature of subscription to the J-Gate by the educational institutions is eligible for exemption from GST under sub-item (v) of item (b) of serial no.66 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018- Central Tax (Rate) dated 25.01.2018.


(D.P.NAGENDRAKUMAR)

Member
Karnataka Appellate Authority
for Advance Ruling


(M.S. SRIKAR)

Member
Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

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2. The Member (State), Advance Ruling Authority, Karnataka
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4. The Assistant Commissioner, LGSTO-100, Bangalore
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