

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

Advance Ruling No. KAR ADRG 03 / 2021

Dated : 29-01-2021

Present:

1. Dr. M.P.Ravi Prasad
Addl. 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	M/s KSF-9 Corporate Services Pvt Ltd., No: 617, Sapthagiri Complex, Vinayaka Layout, Nagarbhavi, Bengaluru-560072
2.	GSTIN or User ID	29AAFCK8154M1ZV
3.	Date of filing of Form GST ARA-01	23.09.2020
4.	Represented by	Sri. Shivaraj Kumar, Director
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore West Commissionerate. Bengaluru.
6.	Jurisdictional Authority - State	ACCT, LGSTO-100, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 & Rs.5,000/- under KGST Act 2017 vide CIN SBIN20092900147035 dated 15.09.2020.

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

M/s KSF-9 Corporate Services Pvt Ltd., (hereinafter referred as 'applicant'), having GSTIN 29AAFCK8154M1ZV, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the 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 incorporated under the Companies Act, 1956 and entered into an agreement with Kuvempu University, Shivamogga to provide manpower supply for security and housekeeping services on contract basis. The applicant has sought advance ruling in respect of the following question:

Whether applicant should charge GST @ 18% for providing security guards and housekeeping services to Kuvempu University, Shivamogga?



BRIEF FACTS OF THE CASE:

3.1 The applicant company is registered under provisions of the GST Act, engaged in providing security services such as providing guards and manpower services and housekeeping service based on requirement of the customers and contract awarded.

3.2 The applicant has stated that they have entered into an agreement with Kuvempu University, Shivamogga for providing security guards and housekeeping services on contract basis and the applicant was successfully awarded this contract through E-tender procurement bid.

3.3 The applicant has stated that the recipient of the services, i.e. Kuvempu University having its administrative Office at Jnana Sahyadri, Shankarghatta, Bhadravathi Taluk, Shivamogga District imparts education through regular and distance mode and having its territorial jurisdiction spreading over the districts of Shivamogga and Chickamagalur. It was established in 1987 by the act of the Karnataka State legislature through amendment No. 28/1976 dated 29 January 1989 under the Karnataka State University Act 1976. The university offers undergraduate and graduate degree programs in wide range of disciplines. It was recognized by the UGC in 1994 and is a member of the Association of Indian Universities (AIU).

3.4 The applicant stated that the administration and management of the University vests with its Registrar and the Chancellor as Governor of Karnataka. Kuvempu University has number of buildings, parks, stadiums, roads and etc, situated at the places in the districts of Shivamogga and Chikkamagalur, to carry out its educational activities under the Karnataka State Universities Act 2000.

3.5 The applicant stated that they had agreed to comply with all the labour laws, rules and Acts in relation to its workers and ensure payment of minimum wages to the workers engaged to provide the said services on outsourcing basis, as per the notifications issued by the Government of Karnataka.

3.4 The applicant needed to deposit the EST/PF contributions of the workers to the appropriate authority as per the rules and shall pay such taxes duties fees and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the contract price.

3.5 The applicant stated that the University shall pay the service charges to the applicant at the rate of 3% per wage of each worker and the applicant shall deposit a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) as security deposit in the form of Bank guarantee given by any Bank recognized by the Government of India for due and proper performance of the obligations undertaken by the Applicant under this contract.

3.6 The applicant stated that he shall indemnify the University against any claim, loss, damage occurred or caused to the University due to willful acts or omissions or carelessness or negligence of the workers employed by the applicant while on duty and



the said applicant at its own expenses shall provide its security personnel with necessary uniform arms etc.

PERSONAL HEARING

4. Sri Shivaraj Kumar, Director of the applicant company appeared before the authority on 15-10-2020 and made submissions reiterating the issue involved.

5. FINDINGS & DISCUSSION:

5.1 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.

5.2 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by the director of the applicant company during the personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

5.3 The nature, of impugned services, is examined and found that the applicant had entered into an agreement with Kuvempu University, Shivamogga. On verification of the Tender copy, provided by the applicant, it is observed that the title of the tender is "*Tender for the Supply of Manpower for Cleaning, Maintenance Work, Gardening, Horticulture and Security Services on Outsourcing basis*". Further, period of contract is for three years and the time commences from the date of deployment of personnel to the University. The condition is that the applicant had to adhere to the Labour Laws in relation to its employees and ensure payment of minimum wages to the personnel engaged on outsourcing basis as per the notifications issued by the Government of Karnataka from time to time in compliance with the provisions of Minimum Wages Act 1920 and Contract Labour (Regulation & Abolition) Act, 1970. The payment of wages by the applicant to their employees shall be made by ECS/ Cheque and a certificate in the Firm's letterhead be furnished to the University along with the copies of the acquittance, duly signed by the concerned employees in confirmation of payment of minimum wages/ agreed salary and compliance of Labour Laws etc. in each case. It is stated in the tender that the bidders are required to quote their rates of service charges in percentage both in words and figures. Other conditions in the contract tender are clearly related to the persons who are to be deployed by the applicant. Further it is stated in para 5.15, that the functional control over the personnel deployed by the Agency will rest with the University and the disciplinary/ administrative/ Technical control will be with the service provider.

5.4 Further, in para 5.16 it is made clear that in case if the University require the service provider to remove any person or persons from work employed by the service provider, who may be incompetent or for his/her/ their misconduct then the service



provider shall forthwith comply with such requirements. The Service Provider shall replace immediately any of its personnel, if they are unacceptable to the University because of security risk, incompetence, conflict of interest and breach of confidentiality or improper conduct upon receiving a written notice from the University.

5.5 It is observed from para 5.21, in relation to the valuation, that the service provider will submit the bill in triplicate in respect of a particular month, which shall be annexed by the dated acquittance roll, certificate given by the Officer in charge regarding attendance and production of documentary evidence towards P.F./ ESI / Service Tax and etc. in respect of its staff for the previous month. Tax, if any shall be deducted at source as per the relevant provisions of the respective applicable Acts. It is also seen that the payments to the service provider would be strictly on the basis of certification by the officer, with whom the person is attached, to the effect that the individual's services are satisfactory and attendance as per the bill preferred by the service provider. Further, from para 5.23 it is observed that no wage / remuneration will be paid to the deployed persons for the days of absence from duty. Further, in para 5.28 it is stipulated that the agency would maintain an attendance register in respect of the staff deployed by the service provider entity on the basis of which wages/ remuneration will be decided in respect of the staff at the approved rates. Further, in para 5.29, it is clearly stated that it shall be the duty of the service provider to pay the salary and other dues every month and thereafter claim reimbursement from the University. Further in para 5.30, it is stated that each of the manpower supplied is entitled to one day casual leave for having worked in a calendar month and in case more than a day in a calendar month, the wages of such excess leave shall be deducted in the monthly bill. It is also seen from the agreement that the University shall provide soaps/ detergents/ chemicals and all such other consumables / equipments, to the cleaning workers, required by them for effective cleaning of the premises of the University.

5.6 It is clear from the above that the requirement of service is for supply of manpower and not cleaning and other services. Hence the claim of applicant that they are providing security services and housekeeping services is incorrect, as the applicant is providing manpower services to the Kuvempu University.

6. Regarding the classification, it is seen that the services provided by the applicant are covered under SAC 99851, which covers "Employment Services including personnel search, referral service and labour supply service" ; SAC 998513 is specifically related to contract staffing services and SAC 998514 is related to temporary staffing services.

7. Regarding the rate of tax applicable, the above services are covered under the sub-entry (ii) of entry 23 of the Notification No.11/2017- Central Tax (rate) dated 28.06.2017 and is liable to tax at the rate of 9% under the CGST Act and similarly liable to tax at the rate of 9% under the KGST Act.

8. The claim of the applicant that they are exempted, under entry no.3 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017, is examined and the said entry reads as under:



"Pure Services (excluding works contract service or other composite supplies involving 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."

8.1 The applicant submitted that the recipient of the services of the applicant i.e. Kuvempu University, Shivamogga, is of the view that their transaction with applicant is exempted from the payment of taxes either under entry number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 or under entry number 66 of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017.

8.2 The exemption as per entry number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 is applicable when any registered person is providing Pure services (excluding works contract service or other composite supplies involving supply of any goods) 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 relation to any function entrusted to a Municipality under article 243W of the Constitution.

8.3 Government Authority has been defined in Notification No. 32/2017-CT (R) dated 13.10.2017 as:

"Governmental Authority" means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution."

It has already been stated above that Kuvempu University was established in 1987 by an Act of the Karnataka State legislature through amendment No. 28/1976 dated 29 January 1989 under the Karnataka State University Act 1976. Thus, it qualifies to be Government Authority.

8.4 Now we need to examine whether providing manpower for security and housekeeping services falls under Article 243G or 243W of the constitution. Article 243G and Article 243W of the constitution are reproduced below:

243G. *Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at*



the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

243W. Powers, authority and responsibilities of Municipalities, etc Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

There are 29 items mentioned in eleventh schedule and 18 items in the twelfth schedule of the Constitution and provision of manpower for security and housekeeping services is not covered under the said lists. Therefore, we conclude that the applicant is not eligible for exemption under Serial No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

9. The applicant is of the view that they are also eligible for exemption under entry number 66 of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, which reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
66	Heading 9992	Services provided - (a) by an educational institution to its students, faculty and staff; (i) to an educational institution, by way of, -transportation of students, faculty and staff;	Nil	Nil



		<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 house-keeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;</p> <p>Provided that nothing contained in entry (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>		
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9.2 The recipient of the applicant i.e Kuvempu University does not provide education by way of pre-school and education upto higher secondary school or equivalent, and also due to the fact that the services provided to the University are not security or cleaning or housekeeping services but supply of manpower services as stated above. Hence the applicant is also not eligible to get exemption under entry number 66 of entry (b) of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017.

10. Further the applicant is of the view that they are providing supply of Security service as well as manpower service used for maintainenance and cleaning of University premises and play ground, campus area and building & office to Kuvempu University, Shivamogga and hence the impugned transaction attracts reverse charge mechanism as per section 9(3) of the GST Act vide Notification No. 13 /2017-Central Tax (Rate) dated 28-06-2017 as amended by the Notification No. 29 /2018-Central Tax (Rate) dated 31-10-2018 which reads as under:

(1)	(2)	(3)	(4)
14	Security services (services provided by way of supply of security personnel) provided to a registered person:	Any person other than a body corporate	A registered person located in the taxable territory.”;
	<p>Provided that nothing contained in this entry shall apply to, -</p> <p>(i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p>		



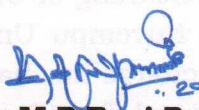
<p>(c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or</p> <p>(ii) a registered person paying tax under section 10 of the said Act.</p>		
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11. We find that Kuvempu University is an establishment of the State Government. Therefore, Kuvempu University is not liable to discharge tax under reverse charge basis. Hence the applicant is liable to discharge GST @ 18% (9% CGST + 9% KGST) on forward charge mechanism on the said supply of manpower services.

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

RULING


The applicant is liable to discharge GST @ 18% (9% CGST + 9% KGST) on forward charge basis for providing manpower services to Kuvempu University, Shivamogga.


(Dr. M.P. Ravi Prasad)

MEMBER

Karnataka Advance Ruling Authority

Place: Bengaluru-560 009
Date : 29-01-2021


(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

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 Central Tax, Bangalore West Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-100, Bengaluru.
5. Office Folder.

