

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

Advance Ruling No. KAR ADRG 57/ 2021

Dated: 29.10.2021

Present:

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

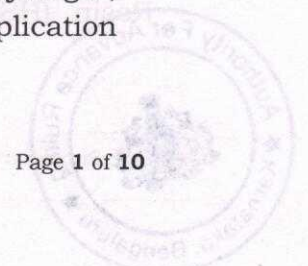
1.	Name and address of the applicant	M/s. Pine Subsidiary Industry, 1 st Floor, 105, Radhakrishna Complex, Dr. Rajkumar Road, 6 th Block, Rajajinagar, Bengaluru-560 010.
2.	GSTIN or User ID	29ALRPS2253B1ZW
3.	Date of filing of Form GST ARA-01	23-06-2021
4.	Represented by	Sri Rishab Singhvi, CA and DAR
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Bangalore West GST Commissionerate, West Division 2, Bengaluru (Range CWD 2)
6.	Jurisdictional Authority - State	ACCT, LGSTO 140, 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 & Rs.5,000-00 under SGST Act vide CIN SBIN20052900075664

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

M/s. Pine Subsidiary Industry, (called as the 'Applicant' hereafter) 1st Floor, 105, Radhakrishna Complex, Dr. Rajkumar Road, 6th Block, Rajajinagar, Bengaluru-560010 having GSTIN 29ALRPS2253B1ZW, have filed an application



Pine Subsidiary Industry



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or 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 Proprietary concern registered under the provisions of the Central Goods and Services Tax Act, 2017 as well as the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively) engaged in import and trading of Gum Rosin and Damar Battu etc.

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

i. *Whether Tax Invoice from Bengaluru office (Registered Place of Business) for imports received at Chennai Sea Port and directly sold to a customer either in Andhra Pradesh, Tamil Nadu, etc., could be raised, or a separate registration is to be obtained at the place of Importation, i.e. Tamil Nadu for the mentioned transactions? Whether the contents and details of the sample draft invoice are correct in law.*

ii. *If we do not need separate registration in Tamil Nadu, can we do the transaction using Karnataka GSTIN. If yes, then in case of issuance of e-way bill, is it correct to mention the GSTIN of Karnataka and the place of dispatch as Chennai Sea Port?*

iii. *Whether Input tax credit would be available to the registration in Karnataka u/s 16(2) even though the goods have not been physically received in the premises of the applicant but directly transported to the customer? What is the required documentation to avail input tax credit in such cases?*

4. **Admissibility of the application:** The question is about “admissibility of input tax credit of tax paid or deemed to have been paid” and “whether applicant is required to be registered under the act” and hence is admissible under Section 97(2)(d) and (f) of the CGST Act 2017.

5. BRIEF FACTS OF THE CASE:

5.1 The applicant states that they are having Registered Office in Bengaluru, holding GST Certificate vide GSTIN 29ALRPS2253B1ZW. They do not have any other registration or a place of business with the same PAN in Tamil Nadu or any other State. The applicant does not maintain any office/fixed establishment in Tamil Nadu or any other state in India other than Karnataka.

5.2 The applicant states that they are engaged in import and trading of Gum Rosin (HSN-38061010) & Damar Battu (HSN-13019022) etc. The applicant



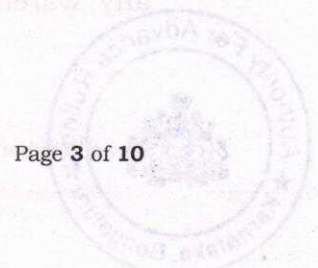
custom clears the said goods from Chennai Sea Port and wishes to supply the same to various states directly from the Customs Sea Port in Chennai. While filing the bill of Entry, the applicant furnishes the GSTIN of Bangalore location (KA) and custom clears these goods.

5.3 The applicant states that once the goods are cleared, in certain cases, they wish to supply these goods to its customers directly from the Customs Port either in Tamil Nadu or Andhra Pradesh or surrounding states. In some cases, the applicant also wishes to directly deliver to customers in Karnataka. The primary reason for transporting the goods directly to customer location (either in Tamil Nadu, Andhra Pradesh, etc.) is to save on the time and the transportation cost, else the dealer would have to bring the goods to Karnataka and then re-deliver the goods to Andhra and Tamil Nadu.

5.4 The applicant states that they wish to seek a clarification whether it can raise an invoice from its registered office in Karnataka for supply of the imported goods received at the Chennai port, to customers directly situated in another state, charging IGST. It also wishes to seek a clarification whether the registration in Bangalore (KA) can be considered as the location of supplier for the purpose of raising the invoice. The applicant also wishes to seek clarification on whether its input tax credit claim u/s 16(2) of CGST Act r/w Section 20 of the IGST Act.

5.5 The applicant states that the facts of the case and questions involved resembles to the one of the case decided by this Hon'ble Bench in **M/s. Kardex India Storage Solution Private Limited in (2020 (3) TMI 1044)** wherein it was held as follows:

"The place of supply in case of import of goods is the location of the importer in terms of section 11(a) of the IGST Act 2017 and in the case of applicant the location of the importer is the state of Karnataka where the applicant has obtained the GST registration. Therefore, the applicant though import the goods to the port nearest to the location of the recipient, said imported goods are deemed to have been supplied to the location of the importer i.e., Karnataka and then further supplied to customer. Hence imported goods supplied directly from the port of import to the customer located in other states or Union territories other than state of Karnataka, such transaction shall be treated as a supply of goods in the course of inter-state trade or commerce in terms of section 7(1) of the IGST Act, 2017 and is liable to issue IGST tax invoice in terms of section 20 of the IGST Act 2017 read with section 31 of the CGST Act 2017. Further, if the applicant supplies the goods to the customers within the state of Karnataka, such transaction shall be treated as intra-State supply in terms of section 8(1) of the IGST Act, 2017 and liable to issue the CGST and SGST tax invoice as per section 31 of the CGST Act 2017".



5.6 The applicant states that the Maharashtra Authority of Advance Ruling in GST-ARA-114/2018-19B-42 Mumbai dated 24.04.2019 in Aarel Import Export Private Limited also held as follows:

“The applicant need not take a separate registration and can do the transaction from Head Office/Registered Place of Business and it appears to mention the GSTIN of the Registered Place in the e-way bill and dispatch place as customs warehouse. However, the aforesaid is subject to issuance of an invoice and payment of applicable IGST or CGST+SGST along with compensation cess, as the case may be as per CGST/SGST/UTGST/IGST Acts respectively”

6. Applicant’s Interpretation of Law:

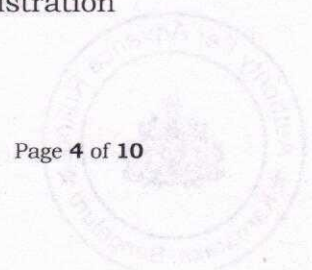
6.1 The applicant is of the view that Section 21 of the CGST Act provides that every supplier is required to take registration in the State from where such person makes taxable supply. Section 25(3) and (4) of the Act also provides that separate registrations may be required in case there are establishments in other States.

6.2 The applicant states that registration has to be sought for the ‘place of business’ which has been defined u/s 2(85) which provides that it would be the place ‘from’ where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both;

6.3 The applicant states that, at the time of import, though goods are not physically received in the premises of the Bangalore office, in terms of the provisions of Section 7(2) of the IGST Act, 2017, such supply of goods imported in India shall be treated as supply of goods in the course of inter-state trade or commerce. As per the provisions of Place of supply under Section 11(a) of the IGST Act, 2017, the place of supply for the goods imported in India is the location of importer. Therefore, in the present case, since the importer is registered in Karnataka and does not have any establishment elsewhere, the place of supply will be Karnataka.

6.4 The applicant states that, at the time of supply from the Chennai Port, the movement takes place from the Port but the billing would take place from Bangalore office. The e-way bill would be raised from Bangalore with despatch address being from Chennai Port. Since, while receiving the goods at the time of import was Bangalore registration, the ‘from’ location for the outward supply would also be the Bangalore office.

6.5 The applicant states that, accordingly, the location of the supplier, i.e. Bengaluru would raise an invoice and charge IGST from the customer either in Tamil Nadu/Andhra Pradesh or any other State and if the customer is in Karnataka, then it will charge CGST+SGST. Since the applicant does not have any warehouse in the state of Tamil Nadu, and hence, separate registration



under Section 22 need not be taken in the state of Tamil Nadu. The applicant is eligible to make an inter-state supply by directly raising an invoice from its Karnataka Registration.

6.6 The applicant is of the view that Section 16(2) provides that the goods should be received in order to avail input tax credit. The explanation to the said section also provides that where goods are directly delivered to a customer under a bill to ship to model then it would be deemed to have received the goods even though the goods are shipped to the end customer location directly.

6.7 The applicant submits that in view of the above explanation u/s 16(2), it has satisfied the said condition and eligible for input tax credit. The bill of entry obtained at the customs port would be sufficient documentation of having paid the IGST on the importation of goods and hence be proof of eligible credit.

PERSONAL HEARING / PROCEEDINGS HELD ON 08-09-2021

7. Sri Rishab Singhvi, Chartered Accountant and Duly Authorises Representative of the applicant, appeared for personal hearing proceedings held on 08.09.2021 and reiterated the facts narrated in their application.

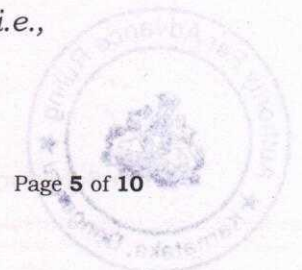
FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and 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 as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issues involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

10. This office had addressed a letter to the Assistant Commissioner of Commercial Taxes, LGSTO-140, Bengaluru on 29-06-2021 to file comments on the application filed. In response to this, the said Officer has furnished comments as below:

Q.1 Whether Tax Invoice from Bengaluru Office (Registered Place of Business) for imports received at Chennai Sea Port and directly sold to a customer either in Andhra Pradesh, Tamil Nadu, etc., could be raised, or a separate registration is to be obtained at the place of importation, i.e.,



Tamil Nadu for the mentioned transactions? Whether the contents and details of the sample draft invoice are correct in law.

Reply:

The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-state supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

Section 22(1) of KGST / CGST Act 2017 states that Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, **from where he makes a taxable supply of goods or services or both**, if his aggregate turnover in a financial year exceeds twenty lakh rupees: Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Section 2(85) "place of business" includes-

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or **any other place** where a taxable person stores his goods, supplies or **receives goods** or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

In the above scenario, the place of business is where the applicant is receiving the goods which are the Chennai Port or the ware house. Hence, he is liable to take registration at the place of import.

Q.2. If we do not need separate registration in Tamil Nadu, can we do the transaction using Karnataka GSTIN. If yes, then in case of issuance of e-way bill, is it correct to mention the GSTIN of Karnataka and the place of dispatch as Chennai Sea Port?



Need to take separate registration since GST is destination based consumption tax.

Q.3. Whether input tax credit would be available to the registration in Karnataka u/s.16(2) even though the goods have not been physically received in the required documentation to avail input tax credit in such cases?

The definition of "input tax" in relation to a registered person also includes the integrated tax and compensation cess charged on import of goods. Thus, input tax credit of the integrated tax and the compensation cess, if any, paid at the time of import shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The integrated tax and compensation cess paid at the time of import shall in essence be a pass through to that extent. The input tax credit of compensation cess, however, can only be used for payment of compensation cess. Furthermore, the Basic Customs Duty (BCD) and education cess, shall, not be available as input tax credit.

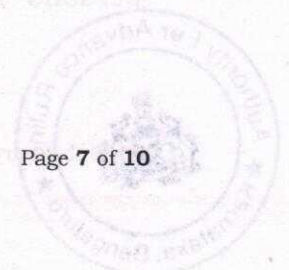
As per section 11 of the IGST Act, 2017 the place of supply of goods, imported into India shall be the location of the importer, which in the present scenario is Karnataka will be available subject to condition that the goods are sold from Karnataka.

11. The applicant states that, they are engaged in import and trading of Gum Rosin (HSN-38061010) & Damar Battu (HSN-13019022) etc. The applicant custom clears the said goods from Chennai Sea Port and wishes to supply the same to various states directly from the Customs Sea Port in Chennai and has sought advance ruling on the questions mentioned in para-3 supra.

12. Section 7(2) of IGST Act 2017, states that, goods imported into the territory of India till they cross the customs frontiers of India, shall be treated as supply of goods in the course of inter-State trade or commerce. The applicant being the importer of Gum Rosin (HSN-38061010) & Damar Battu (HSN-13019022) is liable to pay the integrated tax on goods imported into India in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, on the value as determined under the aforesaid Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, in terms of proviso to the subsection (1) of section 5 of the IGST Act, 2017. In view of the said provisions applicant is liable to pay IGST on the value of the goods imported into India on reverse charge basis.

13. The supply of goods, where the location of the supplier and the place of supply are in:

- (a) two different States;
- (b) two different Union territories; or



(c) a State and a Union territory,
-shall be treated as a supply of goods in the course of inter-state trade or commerce in terms of section 7(1) of the IGST Act, 2017 and supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra- State supply in terms of section 8(1) of the IGST Act, 2017 subject to the provisions of section 10 of the IGST Act, 2017

14. As per the provisions of place of supply of Goods under section 11(a) of IGST Act 2017, "the place of supply of goods imported into India shall be the location of the importer". In case of the applicant, location of the importer is the state of Karnataka where the applicant has obtained the GST registration. Therefore, the applicant though imports the goods to the port of Chennai, imported goods are deemed to have been supplied to the location of the importer i.e., Karnataka and then further supplied to customer. Hence imported goods supplied directly from the port of import to the customer located in other states or Union territories other than state of Karnataka, such transaction shall be treated as a supply of goods in the course of inter-State trade or commerce in terms of section 7(1) of the IGST Act, 2017 and is liable to issue IGST tax invoice in terms of section 20 of the IGST Act 2017 read with section 31 of the CGST Act 2017. Further, if the applicant supplies the goods to the customers within the state of Karnataka, such transaction shall be treated as intra-State supply in terms of section 8(1) of the IGST Act, 2017 and liable to issue the CGST and SGST tax invoice as per section 31 of the CGST Act 2017.

15. Subsection 85 of Section 2 of CGST Act 2017 defines place of business as below:

(85) "place of business" includes—

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

16. Section 22 of the CGST Act 2017 provides that every supplier is required to take registration in the state from where such supplier makes taxable supply of goods or services or both. Section 24(i) of the CGST Act 2017 states that, "persons making any inter-State taxable supply shall be registered under



CGST Act 2017.

17. Since the applicant has stated that he does not have any place of business in Tamil Nadu and does not maintain any office / fixed establishment in Tamil Nadu or any other state in India other than Karnataka, the applicant is not required to take any separate registration at the place of importation as explained in para 13 to 15 supra.

18. Further, section 20 of the IGST Act, 2017 read with section 16 of the CGST Act, 2017 provides that IGST paid on import of goods can be utilized as the credit of the input tax if such imported goods are used in the course of furtherance of his business.

19. Section 16(2) of the CGST Act, 2017 reads as follows:

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

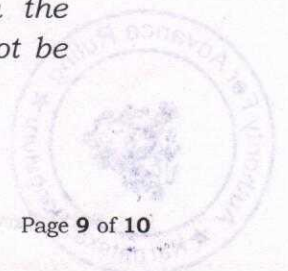
Explanation — For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

20. The explanation to the said section provides that where the goods are directly delivered to a customer under bill to ship to model, then it would be deemed to have received the goods even though the goods are shipped to the end customer location directly.

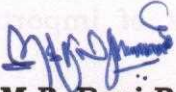
21. In view of the foregoing, we rule as follows

RULING

1. *The applicant can issue tax invoice with IGST to the customer outside Karnataka as per section 20 of the IGST Act 2017 read with section 31 of the CGST Act 2017 for the interstate transaction as provided under section 7(1) of the IGST Act 2017, when the goods are directly dispatched from the port of import with invoicing done from the registered place of business and a separate registration need not be obtained at the place of importation.*



2. The applicant can do the transaction using Karnataka GSTIN. In case of issuance of e-way bill, the applicant can mention the GSTIN of Karnataka and the place of dispatch as Chennai sea port.


(Dr. M.P. Ravi Prasad)

Member

MEMBER
Karnataka Advance Ruling Authority
Place : Bengaluru - 560 009


(T. Kiran Reddy)

Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 29.10.2021

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 Commissioner of Central Tax, Bangalore West GST Commissionerate, West Division-02, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-140, Bengaluru.
5. Office Folder.

RULING

