

**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 30/2020

Date : 04-05-2020

Present:

1. **Dr. Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
2. **Sri. Mashhood Ur Rehman Farooqui,**
Joint Commissioner of Central Tax Member (Central Tax)

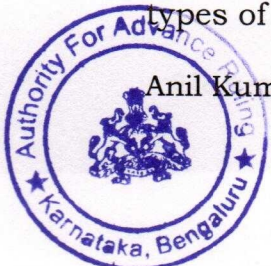
1.	Name and address of the applicant	M/s Anil Kumar Agrawal, Flat # H-801, ETA Garden, Magadi Road, Opp Binny Mills, Bangalore 560023.
2.	GSTIN or User ID	291900000197ARF
3.	Date of filing of Form GST ARA-01	30-09-2019
4.	Represented by	Sri. Abhimanyu Kumar, C A, & Authorised Representative
5.	Jurisdictional Authority – Centre	--NA--
6.	Jurisdictional Authority – State	--NA--
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN ICIC19092900285587 dated 20-09-2019.

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

1. Mr. Anil Kumar Agrawal, Flat # H-801, ETA Garden, Magadi Road, Opp Binny Mills, Bangalore 560023, an unregistered person having User ID 291900000213ART, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules 2017 & Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is an unregistered person and is in receipt of various types of income / revenue, mentioned as under:

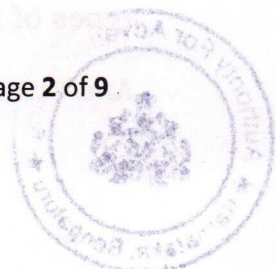
Anil Kumar Agrawaal



- a) *Partner's salary as partner from my partnership firm,*
- b) *Salary as director from Private Limited company*
- c) *Interest income on partners fixed capital credited to partner's capital account*
- d) *Interest income on partners variable capital credited to partner's capital account*
- e) *Interest received on loan given,*
- f) *Interest received on advance given*
- g) *Interest accumulated along with deposit/ fixed deposit*
- h) *Interest income received on deposit/ fixed deposit*
- i) *Interest received on Debentures*
- j) *Interest accumulated on debentures*
- k) *Interest on Post office deposits*
- l) *Interest income on National Savings certificate (NSCs)*
- m) *Interest income credited on PF account*
- n) *Accumulated Interest (along with principal) received on closure of PF account.*
- o) *Interest income on PPF*
- p) *Interest income on National Pension Scheme (NPS)*
- q) *Receipt of maturity proceeds of life insurance policies*
- r) *Dividend on shares*
- s) *Rent on Commercial Property*
- t) *Residential Rent*
- u) *Capital gain /loss on sale of shares*

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- i. *Out of the given sources of Income/ Revenue which all revenue income shall be considered for Aggregate Turnover for registration?*



ii. *Out of given nature of income / revenue, when the supply, even if exempted, need to be considered?*

4. **Admissibility of the application** : The applicant filed the instant application as an unregistered person, in relation to the income / revenue being received by him and sought advance ruling in respect of the questions mentioned at para 3 supra. The applicant claims that the questions raised by him are on the issues covered under Section 97(2)(c) & (f) of the CGST Act 2017. But it is observed that only one question is covered under Section 97(2)(f) of the CGST Act 2017, that too in an indirect way, as the question is about aggregate turnover, for registration. Therefore the application is partially admitted.

5. **Applicant's interpretation of law** : The applicant furnishes his understanding / interpretation of law issue /point wise which is as under:

- a) The income received towards partner's salary, as a partner, from the partnership firm and also the income received towards salary as Director from a Private Limited Company are not includable in the Aggregate Turnover for the reason that any type of salary is not in the purview of GST as the same needs to be treated neither as supply of goods nor as supply of services.
- b) The income received towards rent on commercial property is includable in the Aggregate Turnover as renting of immovable commercial property is a taxable service and whenever rent falls due, on the basis of rental agreement, either monthly or quarterly, the supply of service is deemed to have been done.
- c) The income received towards residential rent is includable in the Aggregate Turnover, for registration, though the renting of residential property is an exempted service.
- d) The income received towards all remaining 15 types / categories is not includable in the Aggregate Turnover, as the said all 15 cases are not under the purview of GST and hence do not amount to supply under GST law.

PERSONAL HEARING / PROCEEDINGS HELD ON 13.12.2019



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6. Sri. Abhimanyu Kumar, CA & Authorized Representative of the applicant appeared for personal hearing proceedings held on 13.12.2019 & reiterated the facts narrated in their application.

7. DISCUSSION & FINDINGS:

7.1 We have considered the submissions made by the Applicant in his application for advance ruling as well as the submissions made by Sri. Abhimanyu Kumar, CA & Authorized Representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

7.2 At the outset, we would like to make it clear that the provisions of both the CGST Act, 2017 and the KGST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

7.3 The applicant, an unregistered person, is in receipt of various types of income and intend to know whether the income so received in each type is includable in the Aggregate Turnover, for the purpose of registration, under the provisions of GST Act.

7.4 In this regard, we invite to reference to the definition of “Aggregate Turnover”, in terms of Section 2(6) of the CGST Act 2017, which reads as under:

“aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

It is clearly evident from the above definition that the aggregate turnover is equal to the sum of value of all taxable supplies, value of exempt supplies, value of supplies towards export of goods or services or both and value of inter-state supplies of persons having same Permanent Account Number, to be computed on All India basis excluding the value of inward supplies on which tax is payable by a person on Reverse



Charge basis and also excluding the central tax, State tax, Union territory tax, integrated tax and cess.

7.5 It could be seen from above that the aggregate turnover is sum of different supplies. Therefore any income to be included in the aggregate turnover need to be related to any transaction that amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017.

Section 7(1)(a) of the CGST Act 2017 stipulates that any transaction must consist the following three components to get qualify as 'Supply'.

- i. *The transaction must involve a supply, of goods or services or both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made.*
- ii. *The transaction must be for a consideration by a person*
- iii. *The transaction must be in the course or furtherance of business.*

In view of the above, income received from each source has to be examined as to whether it is in relation to any transaction that amounts to supply or not. Therefore we consider different types of sources of income, one at a time.

7.6 **Interest income received from different sources :** The applicant is in receipt of interest income from different sources as mentioned at para 2 under (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p). All these interest income are out of the deposits / loans extended by the applicant. The services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services), falling under SAC 9971, are exempted under Entry No.27(a) of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. Thus the interest earned by the applicant, out of the deposits/loans/advances extended, amounts to consideration and is exempted by virtue of entry number mentioned supra. Therefore in the instant case extending the deposits/loans/advances by the applicant is nothing but exempted service and the actual amounts of deposits/loans/advances become the value of the service. Thus these amounts are to be included in the aggregate turnover for registration, under the provisions of GST Act.



7.7 Partner's salary, received as partner, from applicant's partnership firm : The applicant is in receipt of certain amount termed as partner's salary from the firm where the applicant is also a partner. The applicant has not furnished any documents relevant to the issue, such as copy of agreement, appointment order etc., so as to decide whether the applicant is an employee of the partnership firm or not. In case, if the applicant is a working partner and is getting salary then the said salary is neither supply of goods nor supply of service in terms of clause 1 of Schedule III of CGST Act 2017. Further, in case if the applicant is in receipt of the amount towards his share of profit from the said partnership firm, then also the said income is not under the purview of GST as the *share of profit* is nothing but application of money and hence the said salary is not required to be included in the aggregate turnover for registration under the provisions of GST Act.

7.8 Salary received as Director from a Private Limited Company : The applicant is in receipt of certain amount termed as salary as Director of a private limited company. Two possibilities may arise with regard to the instant issue of amount received by the applicant. The first possibility that the applicant is the employee of the said company (Executive Director), in which case the services of the applicant as an employee to the employer are neither treated as supply of goods nor as supply of services, in terms of Schedule III of CGST Act 2017.

The second possibility that the applicant is the nominated director (non Executive Director) of the company and provides the services to the said company. In this case the remuneration paid by the company is exigible to GST in the hands of the company under reverse charge mechanism under section 9(3) of the CGST Act 2017, in the hands of the company, under entry no. 6 of **Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017**.

In the instant case the applicant has not furnished any documentary evidence such as copy of agreement between the applicant and the said private company, copy of appointment order, details of ESI, PF deductions etc., so as to decide whether the applicant is in receipt of salary as an employee or as an independent director. Thus in the absence of any documentary evidence, it is not possible to decide whether the amount received by the applicant is towards his services as an Executive Director or a Non-Executive Director.



In view of the above, the remuneration received by the applicant as Executive Director is not includable in the aggregate turnover, as it is the value of the services supplied by the applicant being an employee. Further if the applicant receives the remuneration as a Non-Executive Director, such remuneration is liable to tax under reverse charge mechanism under section 9(3) of the CGST Act 2017, in the hands of the company, under entry no. 6 of **Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017**. Thus the value of the said services of the applicant being a Non-Executive Director are includable in the aggregate turnover, as it is the value of the taxable services supplied by the applicant, though the tax is discharged by the private limited company, under reverse charge mechanism.

7.9 **Rental income on Commercial Property** : The transaction of rental/lease of commercial property amounts to supply; applicant receives periodical income towards the impugned supply of service & the same is in the course or furtherance of business and hence the said transaction amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017. Thus it is a taxable supply of service having SAC 997212 and therefore the value of such supply is to be included in the aggregate turnover, for registration.

7.10 **Rental income on Residential Property:** The transaction of rental/lease of residential property amounts to supply; applicant receives periodical income towards the impugned supply of service & the same is in the course or furtherance of business and hence the said transaction amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017.

However “Services by way of renting of residential dwelling for use as residence, classified under SAC 997211” are exempted from the tax (GST) in terms of entry number 12 of the Notification No. 12/2017 dated 28.06.2017. Thus the impugned supply of service of renting of residential property becomes an exempted supply. Aggregate Turnover includes the value of the exempted supplies also. Therefore the income received by the applicant towards rent of residential property is to be included in the aggregate turnover.

7.11 The applicant is also in receipt of income out of maturity proceeds of life insurance policies, dividend on shares and capital gain/loss on sale of shares. The term ‘Securities’, which has the same meaning assigned to it in



clause 2(h) of Securities Contracts (Regulation) Act 1956, in terms of Section 2(101) of the CGST Act 2017, includes shares, scrips, stocks, bonds, derivative instruments etc., that have been explicitly excluded from the purview of GST, by virtue of its exclusion from the definition of 'goods' and 'services', as contained in Section 2(52) and Section 2(102) of the CGST Act respectively. In the instant case the dividend on shares, capital gains/losses on sale of shares are relevant to the shares (securities) and the income earned in this relation is nothing but application of money. Therefore this income earned out of shares, which are excluded from the definition of goods or services, also gets excluded from the said definition of goods / services. Therefore they are not relevant to the aggregate turnover and hence are not required to be added to the aggregate turnover for registration under the provisions of GST Act.

7.12 The applicant is also in receipt of income out of maturity proceeds of life insurance policies. The impugned income would be received on maturity of the insurance policies i.e. on closure of the insurance contract consequent on maturity of the said policies. The insurance premium of policies is taxable under GST, being the consideration for the services provided by the insurance companies. Therefore on completion of the said contract / maturity of the policy, there would not be any service involved between the policy holder and the insurance company. Therefore the amounts received on maturity of the insurance policies are not relevant to the aggregate turnover and hence are not required to be added to the aggregate turnover for registration under the provisions of GST Act.

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

RULING

- 1) The incomes received towards (i) salary/remuneration as a Non-Executive Director of a private limited company, (ii) renting of commercial property and (iii) renting of residential property and (iv) the values of amounts extended as deposits/loans/advances out of which interest is being received are to be included in the aggregate turnover, for registration.

- 2) The income received from renting of residential property is to be included in the aggregate turnover, though it is an exempted supply.



(Dr. Ravi Prasad M.P.)
Member



(Mashhood ur Rehman Farooqui)
Member

Place : Bengaluru,

Date : 04-05-2020

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, West Commissionerate, Bengaluru
4. The Asst. Commissioner, LGSTO- 70, Bengaluru.
5. Office Folder