

Supply of license of pre-developed or pre-designed software amounts to supply of goods covered under heading 8523

The AAR, Karnataka in the matter of *M/S. SPSS South Asia Pvt. Ltd., [Advance Ruling No. KAR/ADRG/15 of 2021, dated March 24, 2021]* held that, supply of license of pre-developed or pre-designed software by assessee amounts to supply of goods and said supply is covered under tariff heading 8523. Further, such supply of computer softwares to a public funded research institution are covered under Serial No. 1 of *Notification No.45/ 2017-Central Tax (Rate) dated November 14 2017 ("NN. 45/2017- CT(R)")*.

Facts:

M/S. SPSS South Asia Pvt. Ltd. ("**the Applicant**") is a Private Limited Company, and an authorized reseller for various IBM SPSS Software in India and provides various statistical modelling software to various publicly funded research institutions. The Applicant is a pure trader in such software and does not develop/ modify any software prior to selling it to a customer.

The Applicant was of view that as per Entry 5(c) of Schedule II of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"), if a pre-developed or pre-designed software is supplied in any medium/storage or made available through the use of encryption keys, the same is to be treated as a supply of goods classifiable under tariff heading 8523. Thus, the sale of software licenses through the medium of the internet should be a supply of services.

The Applicant contended that supply of licenses for internet downloaded software fall under the Serial No. 1 of the NN. 45/2017-CT(R) and therefore the Applicant can charge a reduced rate of tax when supplies of internet downloaded software are made to various public funded scientific and research institutions.

Issue:

Whether the supply of licenses for internet downloaded software fall under the Serial No. 1 of the NN. 45/2017-CT(R)?

Held:

The AAR, Karnataka in ***Advance Ruling No. KAR/ADRG/15 of 2021, dated March 24, 2021*** held as under:

- Noted that, the software supplied by the Applicant is a pre-developed or pre-designed software and made available through the use of encryption keys and hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of 'goods'. Further, the goods supplied can't be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable and hence the goods supplies is “Computer Software” and more specifically covered under “Application Software”.
- Stated that, the Serial No. 1 of the NN. 45/2017-CT(R) stipulates the rate of CGST and SGST respectively@ 2.5%, if the goods of computer software is supplied to public funded research institutions subject to fulfillment of the conditions prescribed under column 4 of the Serial No. 1 of NN. 45/2017-CT(R).
- Observed that, the Explanatory Notes to the Scheme of Classification of Services stipulates that the services of ‘limited end-user license as part of packaged software’ are excluded from the SAC 997331 that covers ‘licensing services for the right to use computer software and databases’. Hence, the supply made by the Applicant is covered under “Supply of goods” and the said supply is covered under tariff heading 8523.
- Held that, the Applicant is supplying computer software to National Institute of Science Education and Research, Bhubaneswar, a public funded research institution, under the administrative control of Department of Atomic Energy (DAE), Government of India. Further, the said institute has also furnished a certificate as required to fulfill the required condition. Therefore, Serial No. 1 of the NN. 45/2017-CT(R) is applicable to the transaction/ supply of the Applicant.

Relevant Provision:

Entry 5(c) of Schedule II of the CGST Act:

“5. Supply of services

The following shall be treated as supply of services, namely:-

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;”

Serial No. 1 of NN. 45/2017-CT(R):

“Concessional GST rate of 2.5% on scientific and technical equipments supplied to public funded research institutions-

S. No.	Name of the Institutions	Description of the goods	Conditions
(1)	(2)	(3)	(4)
1.	Public funded research institution or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital	<p>(a) Scientific and technical instruments, apparatus, equipment (including computers);</p> <p>(b) accessories, parts, consumables and live animals (experimental purpose);</p> <p>(c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches;</p> <p>(d) Prototypes, the aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in financial year.</p>	<p>(i) The goods are supplied to or for –</p> <p>(a) a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and such institution produces a certificate to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to the supplier at the time of supply of the specified goods; or</p> <p>(b) an institution registered with the Government of India in the Department of Scientific and Industrial Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the</p>

			<p><i>Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union territory in concerned department to the supplier at the time of supply of the specified goods;</i></p> <p><i>(ii) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only;</i></p> <p><i>(iii) In the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.</i></p>
--	--	--	---

We have recently released the **6th Edition** of our **GST Book** titled **"GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES"**, in a set of **3 Volumes**. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!

This book can be ordered online at: <https://rb.gy/benrpb>

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.