

**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 45 / 2022

Dated: 02-12-2022

Present:

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

1.	Name and address of the applicant	M/s. YAADVI SCIENTIFIC SOLUTIONS PRIVATE LIMITED, No.68/P, Khata Janjar No.99, Hootagally Industrial Area, Survey No.188, Koorgally Grama Panchayath, Mysuru-570 018.
2.	GSTIN or User ID	29AABCY2333C1ZL
3.	Date of filing of Form GST ARA-01	28-04-2022
4.	Represented by	Sri Praveena Shastri, Chartered Accountant
5.	Jurisdictional Authority – Centre	The Commissioner of Central Taxes, Mysuru Commissionerate, GST Bhavan, Mysuru-570011
6.	Jurisdictional Authority – State	ACCT, LGSTO-190, Mysuru
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 and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No.DC2902220280072 Dated 25-02-2022

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

M/s. Yaadvi Scientific Solutions Private Limited, (hereinafter referred to as 'The applicant'), No.68/P, Khata Janjar No.99, Hootagally Industrial Area, Survey No.188, Koorgally Grama Panchayath, Mysuru-570018, having GSTIN 29AABCY2333C1ZL have filed an application for 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 Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The Applicant is an integrated Custom Research and Manufacturing Services (CRAMS) provider offering single point access to discovery services, CPRD (Chemical Process Research and Development), drug production development & regulatory support services and also pharmaceutical technologies to global pharma and Biotech Companies.

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

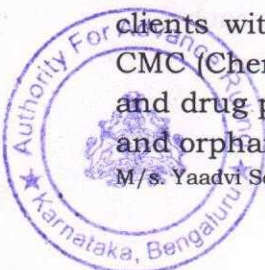
- i. *Whether on reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is liable to tax?*
- ii. *Whether Reverse Charge Mechanism is applicable on reimbursement of expenses paid on behalf of the Company at actuals which are incurred by the employee staff who is also a whole-time director Company?*
- iii. *Whether-*
 - a. *time limit prescribed to take input tax credit under the Section 16(4) of the GST Act, 2017 applies only for the invoice or debit note for the supply of goods or services or both or it shall also applies to invoice issued in accordance with the provisions of clause (f) of sub-section (3) of Section 31 i.e., self-invoices by registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 (under reverse charge mechanism).*
 - b. *Tax paid during current financial year under reverse charge mechanism as per sub-section (3) or sub-section (4) of section 9 for any of the previous financial year transaction, input tax credit on such payment of tax would be availed in the year of payment or in the year in which transaction happened.*
- iv. *If answer to the Question 1 and Question 2 is affirmative, whether reverse charge is to be calculated on values including GST or excluding GST.*

4. **Admissibility of the application:** The question is about the “determination of the liability to pay tax on any goods or services or both” and hence is admissible under Section 97(2)(e) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they are integrated Custom Research and Manufacturing Services (CRAMS) provider offering single point access to discovery services, CPRD (Chemical Process Research and Development), drug production development & regulatory support services and also pharmaceutical technologies to global pharma and Biotech Companies. Company accelerates drug development projects of its partners and clients with technologies, expertise and capabilities to execute pre-clinical programs, CMC (Chemistry, manufacturing and control) for Active Pharmaceutical Ingredient (API) and drug products, and registration solutions for New Chemical Entities (NCEs), 505b2 and orphan drugs.

M/s. Yaadvi Scientific Solutions Private Limited



5.2 The applicant states that they are performing such services which require extensive co-ordination with other research sites / customer sites to attend appropriate meetings (Joint Scientific Review Committee, Steering Committee), supervise studies at third party sites (preclinical and clinical sites), the employees are needed to undertake travel / work from home etc., Company while providing above said services, some of the expenses are incurred by their employees on behalf of the Company, the details of which are as follows:

- i. Domestic Travelling Expenses
- ii. Reimbursement of Transportation and Food Expenses.
- iii. Boarding and Lodging
- iv. Consumables
- v. Printing and Stationery
- vi. Postal and Courier Charges
- vii. Mobile and Telephone Charges etc

The applicant states that employee staff takes all the invoices in the name of the Company along with the Company GSTIN for domestic transaction invoices and company takes input tax credit in respect of eligible transactions. In respect of transactions which attracts reverse charge such as payments to;

- i. Goods Transport Agencies,
- ii. Lawyers / advocates
- iii. Import of services etc.,

The applicant states that the Company discharges the liability by paying under reverse charge mechanism to government in the cases cited above. Employees incur expenses on behalf of the company in the course of employment and the said amounts are reimbursed by the company on periodical basis. These expenses are incurred by the company and are only paid by the employee and later reimbursed to the employee by the company.

5.3 This office had addressed a letter to the Assistant Commissioner of Commercial Taxes, LGSTO-190, Mysuru on 28-04-2022 to file comments on the application filed. In response to this, the ACCT has furnished comments as below:

"1. Whether on reimbursement of expenses at actual cost which are incurred by the employee staff on behalf of company is liable to tax?"

As per the information furnished by the applicant, the applicant Company is the Employer, who reimbursed the expenses incurred by its employee staff.

Employee staff of the Company has availed various types of services from different vendors. Vendors of supply of services charged tax on the Company and also issued Tax invoice in the name of the Company as per the provisions specified



under section 31(2) and 31(3)(f) of the KGST Act 2017 as per the information furnished in the application.

As per sub section (105) of section 2 of the KGST Act 2017, the definition of "supplier" is as under:

"in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;"

As per sub section (93) of section 2 of the KGST Act 2017 the definition of "Recipient" is as under:

"Recipient" of supply of goods or services or both, means:-

- (a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*
- (b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*
- (c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered*

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or service or both supplied;"

Similarly Scope of supply is envisaged in section 7 of the KGST Act 2017 as under:

1. For the purpose of this Act, the expression "supply" includes –

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course of furtherance of business;*
- (b) import of services for a consideration whether or not in the course or furtherance of business;*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;*

2. Notwithstanding anything contained in sub-section (1),-



(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

3. Subject to the provisions of sub-sections (1) and (2), the Government may on the recommendations of the Council, specify, by notification, the transactions that are to be treated as –

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

In view of the said provision, as per my knowledge this service is taxable under KGST ACT 2017.

2. Whether Reverse Charge Mechanism is applicable on reimbursement of expenses paid on behalf of the company at actual which are incurred by the employee staff who is also a whole-time director of the Company?

From the information furnished by the applicant, it is found that the employee staff is also a whole time director of the Company incurs expenses on behalf of the company. Company authorised by its board resolution for remuneration and reimbursement of expenses and the said amounts are reimbursed by the company on periodical basis. These expenses are incurred by the company and are only paid by the employee director and after reimbursed to the employee director by the company.

Further the applicant has informed that as reimbursement of expenses does not forms part of Salaries or perquisites and is not subject to TDS under section 194J of the IT Act, then that all the activities performed by the director are in the course of employer-employee relation (i.e a "Contract of service") and reverse charge is not applicable on said transaction.

As per information furnished by the applicant, the word "expenses paid" is neither categorized "under salary" nor "other than the salary". If it comes under the definition of Salary then, as per SL No 5.3 of Circular No140/10/2020 Central Tax (Rate) dated 10.06.2020 it is clarified as under:

5.3. Accordingly, it is clarified that the part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

The word "expenses paid", if it comes under the definition of "other than the salary" then as per Sl No. 5.4 of Circular No 140/10/2020 Central Tax (Rate) dated 10.06.2020, it is clarified as under:



5.4 It is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under section 194J of the IT Act as Fees for professional or Technical services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

In view of the above, as per my knowledge, "expenses paid" as informed by the applicant, if it is coming under the definition of "Salary" then it is not a taxable service and if it is coming under "other than the Salary" then as per circular No 13/2017- Central Tax (Rate) dated 28.06.2017, the company is liable to discharge the applicable GST on it on reverse charge basis.

3. Whether

a. Time limit prescribed to take input tax credit under the section 16(4) of the GST Act, 2017 applies only for the invoice or debit note for the supply of goods or service or both or it shall also applies to invoice issued in accordance with the provisions of clause (f) of sub section (3) of Section 31 i.e self invoices by registered person who is liable to pay tax under sub section (3) or sub section (4) of section 9 (under reverse charge mechanism)

b. Tax paid during current financial year under reverse charge mechanism as per sub section (3) or sub section (4) of section 9 of any of the previous financial year transaction, input tax credit on such payment of tax would be availed in the year of payment or in the year in which transaction happened

For the above point, as per my knowledge, Time of supply of service & date of payment, date of invoice and required document and condition for claiming input tax credit, are very much relevant to this.

Regarding Time of supply, Section 13(3)(a) specifies that:

" in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates namely:

(a) The date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier;

Regarding date of Invoice, Section 31(3)(f) specifies that:

"a registered person who is liable to pay tax under sub section (3) or sub section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both"



Regarding required document and condition for claiming input tax credit, Rule 36(1)(b) specifies that:

"The input Tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents namely:

(b) an invoice issued in accordance with the provisions of clause (f) of sub section (3) of section 31, subject to the payment of tax"

In view of the above, as per my knowledge, time limit for availing input tax credit under reverse charge mechanism is date of payment as entered in the books of accounts of the recipient or the date on which the payment debited in his bank account whichever is earlier".

6. Applicant's Interpretation of Law:

6.1 The applicant with reference to question (i) is of the view that the term "consideration" in relation to the supply of goods or services or both is defined in clause (31) of Section 2 of the Central Goods and Service Tax Act, 2017 as under:

"(31) "Consideration" in relation to the supply of goods or services or both includes –

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

(b) the monetary value of any act or forbearance, in respect of in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

Provided that a deposit given in respect of the supply of goods or services, or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

The amount paid by the employee to the supplier of service is covered under the term "consideration" as if it is paid by the company itself for the services received by them on behalf of the company. This amount reimbursed by the company to the employee later would not amount to consideration for the supplies received as the services of the employee to his employer in the course of his employment is not a supply of goods or supply of services and hence the same is not liable to tax.

6.2 The applicant with reference to question (ii) is of the view that Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 states that "on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of such services". The notification is issued under Section 9(3) of the CGST Act, 2017. Entry 6 of the said Notification reads as under.



Sl No.	Category of Supply of Services	Supplier of Service	Recipient
1	2	3	4
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The Company or a body corporate located in the taxable territory

Further Central Board of Indirect Taxes and Customs ("CBIC") in its Circular No: 140/10/2020 – GST dated 10.06.2020 has issued clarification in respect of levy of GST on Director's remuneration – Reg same is reproduced below:

"2. The issue of remuneration to directors has been examined under following two different categories:

(i) *Leviability of GST on remuneration paid by companies to the **independent directors** defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and*

(ii) *leviability of GST on remuneration paid by companies to the **whole-time directors** including managing director who are employees of the said company.*

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue as below:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

4.1 The primary issue to be decided is whether or not a "Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

a. *the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition and thus he may be a person who is not an employee of the company.*

b. *the definition of "independent directors" under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.*

4.2 *Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of schedule III of*



the CGST Act and are therefore taxable. In terms of entry at SL No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

4.3 Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a “contract of service”) or is there any element of “contract for service”.

The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director’s remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source (‘TDS’) under Section 192 of the Income Tax Act, 1961 (‘IT Act’). However, in cases where the remuneration is professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

5.3 Accordingly, it is clarified that the part of Director’s remuneration which are declared as “Salaries” in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

5.4 It is further clarified that the part of employee Director’s remuneration which is declared separately other than “Salaries” in the Company’s accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.”

As reimbursement of expenses does not forms part of Salaries or perquisites and is not subject to TDS under section 194J of the IT Act, we understand that all the activities performed by the director are in the course of employer-employee relation (i.e. a “contract of service”) and reverse charge is not applicable on said transaction.

6.3 The applicant with reference to question iii (a) is of the view that -



Section 16(4)

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:

Section 16(2).

(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.

Such additional documents are prescribed under Rule 36

RULE 36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely.-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

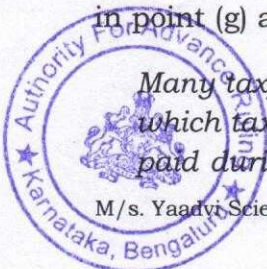
(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

It may be noted RCM self-invoice is not an invoice for supply of goods or services, but an invoice for the receipt, prescribed as eligible documents under clause (b) of Rule 36. The time limit prescribed under 16(4) applies only for the invoice or debit note for the supply of goods or services or both. Section 16(4) would have been more specific if the intention was to cover these documents also.

6.4 The applicant with reference to question iii(b) has stated that CBIC in its press release on 3rd July 2019 to address issues related to annual return which CBIC stated in point (g) as follow-

Many taxpayers have requested for clarification on the appropriate column or table in which tax which was to be paid on reverse charge basis for the FY 2017-18 but was paid during FY 2018-19. It may be noted that since the payment was made during



FY 2018-19, the input tax credit on such payment of tax would have been availed in FY 2018-19 only. Therefore, such details will not be declared in the annual return for the FY 2017-18 and will be declared in the annual return for FY 2018-19. If there are any variations in the calculation of turnover on account of this adjustment, the same may be reported with reasons in the reconciliation statement (FORM GSTR-9C).

From the above clarification it is to be noted that, input tax credit in respect of taxes paid on reverse charge basis shall be allowed to take credit in the year of such payment of tax.

PERSONAL HEARING / PROCEEDINGS HELD ON 22-06-2022

7. Shri Praveena Shastri, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on **22-06-2022** 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 the CGST Act, 2017 and the 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. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. The Applicant is an integrated Custom Research and Manufacturing Services (CRAMS) provider offering single point access to discovery services, CPRD (Chemical Process Research and Development), drug production development & regulatory support services and also pharmaceutical technologies to global pharma and Biotech Companies. Performing such services require extensive co-ordination with other research sites / customer sites, supervise studies at third party sites (preclinical and clinical sites), the employees are needed to undertake travel / work from home etc. Company provides many of the services but some of the expenses are incurred by their employees on behalf of the Company and the said amounts are reimbursed by the company on periodical basis.

11. The applicant states that employees take all the invoices in the name of the Company along with the Company GSTIN for domestic transaction invoices and company takes input tax credit in respect of eligible transactions. In respect of transactions with Goods Transport Agencies, Lawyers / advocates and Import of services etc., the Company discharges the liability by paying under reverse charge mechanism.



12. The facts presented by the applicant have been examined and it is found that the applicant's employees incur expenses on behalf of the company in the course of employment and the said amounts are reimbursed by the applicant on periodical basis. The issue is whether reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is liable to tax.

12.1 Services by an employee to the employer in the course of or in relation to his employment are covered under Clause 1 of the Schedule III which relates to the activities or transactions which shall be treated neither as a Supply of Goods nor as a Supply of Services. Hence the services provided by the employees of the Applicant to the Applicant are not a supply. Further, the expenses incurred by the employees are expenses of the applicant and the consideration is payable by the applicant himself and later on reimbursed by the applicant.

12.2 The term "Consideration" in relation to the supply of goods or services or both is defined in clause (31) of Section 2 of the Central Goods and Services Tax Act, 2017 as under:

"(31) "Consideration" in relation to the supply of goods or services or both includes –

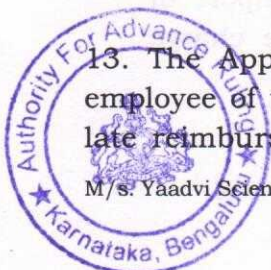
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply,"

12.3 The amount paid by the employee to the supplier of service represents the amount paid 'by any other person' and is therefore covered under the term "consideration" paid by the applicant to the service provider for the services received by the employees on behalf of the company. This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received as the services of the employee to his employer in the course of his employment is not a supply of goods or supply of services in terms of clause 1 of the Schedule III of the CGST Act, 2017 and hence the same is not liable to tax.

13. The Applicant states that whole time director of the company who is also an employee of the company incurs expenses on behalf of the company and the same is late reimbursed to the director by the company. The applicant states that employee



director takes all the invoices in the name of the Company along with the Company GSTIN for domestic transaction invoices and company takes input tax credit in respect of eligible transactions. In respect of transactions with Goods Transport Agencies, Lawyers / advocates and Import of services etc., the Company discharges the liability by paying under reverse charge mechanism. Now the applicant wants to know whether Reverse Charge Mechanism is applicable on reimbursement of expenses as mentioned above to a whole-time director Company who is also an employee of the company.

13.1 Circular No:140/10/2020 dated: 10.06.2020 clarifies about the leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company as below:

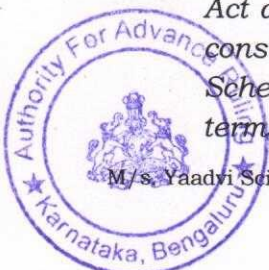
Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 where in the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

5.3. Accordingly, it is clarified that the part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

5.4 It is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017-Central Tax (Rate) dated 28.06.2017,



the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis

13.2 A director who has taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company (employment). As per the circular only part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and hence taxable under reverse charge basis. Hence Reverse Charge Mechanism is not applicable on reimbursement of expenses on actuals, to a whole-time director of Company who is also an employee of the company.

14. The Applicant wants to know whether section 16(4) of the GST Act, 2017 applies to invoice issued under reverse charge mechanism and also wants to know when can the ITC on payment of tax under RCM be availed. Since these questions are not covered under section 97(2) of the CGST /KGST Act which specifies the questions on which Advance Ruling is sought, the same cannot be answered.

15. The Applicant wants to know whether reverse charge is to be calculated on values including GST or excluding GST. For this we invite reference of section 15 of CGST Act 2017 and the same is reproduced below:

Section 15. Value of Taxable Supply.-

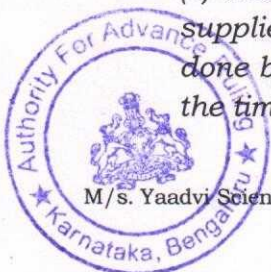
(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;



(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

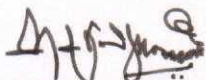
Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Section 15(2) of the CGST Act 2017 says about what all shall be included in the value of supply. Based on the same, we conclude that reverse charge is to be calculated on the gross consideration paid or payable to the supplier, i.e, the values excluding GST.

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

RULING

- i. *Reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is not liable to tax since the same is covered under Clause 1 of the Schedule III of CGST Act 2017.*
- ii. *Reverse Charge Mechanism is not applicable on reimbursement of expenses paid on behalf of the Company at actuals which are incurred by the employee staff who is also a whole-time director Company.*
- iii.
 - a) *This question is not covered under section 97(2) of the CGST Act 2017, in respect which an applicant can seek advance ruling and hence this authority refrains from giving any ruling in this regard.*
 - b) *This question is not covered under section 97(2) of the CGST Act 2017, in respect which an applicant can seek advance ruling and hence this authority refrains from giving any ruling in this regard.*
- iv. *Reverse charge is to be calculated on values excluding GST.*



(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru, Bengaluru - 560 009

Date: 02-12-2022

M/s. Yaadvi Scientific Solutions Private Limited



(Kiran Reddy T)

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 Commissioner of Central Taxes, Mysuru Commissionerate, GST Bhavan, S1 and S2, Vinaya Marga, Mysuru-570011.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-190, Mysuru.
5. Office Folder.

