

Determination of correct Classification of Licensing services for the Right to Broadcast and Show Original Films, Sound Recordings, Radio and Television Programmes etc., under SAC 997332. HELD The classification of licencing services of distribution of rights to exhibit the film by the distributor to the exhibitor are classified under SAC 999614.

Advance Ruling No. KAR ADRG 30/2023, Dated 15th September, 2023

THE AUTHORITY FOR ADVANCE RULINGS

IN KARNATAKA

GOODS AND SERVICES TAX

VANIJA THERIGE KARYALAYA, KALIDASA ROAD

GANDHINAGAR, BENGALURU - 560 009

Present:

1. Dr. M.P.Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	Sri NAGARAJU JAYANNA, Partner of M/s J B Exhibitors, 2nd Floor, No. 1/1, Zinka Plaza, 6th Cross, Gandhinagar, Bengaluru - 560009.
2.	GSTIN or User ID	29AAMFJ0530C1ZO
3.	Date of filing of Form GST ARA-01	12-06-2023
4.	Represented by	Sri. V R Balasubramani, Advocate & Authorised Representative
5.	Jurisdictional Authority -Centre	The Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru. (Range-DNDI)
6.	Jurisdictional Authority - State	ACCT, LGSTO-31, Chamarajapete, 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 & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2906230034329 dated 09.06.2023.

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

UNDER SECTION 98(4) OF THE KGST ACT, 2017

Sri Nagaraju Jayanna, Partner of M/s J B Exhibitors, (herein after referred to as 'Applicant'), 2nd Floor, No. 1/1, Zinka Plaza, 6th Cross, Gandhinagar, Bengaluru - 560009., having GSTIN 29AAMFJ0530C1ZO, 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, KGST Act.

2. The applicant is an exhibitor of films and intends to venture into the business of distribution of films for exhibition in theatres. Therefore, the applicant sought advance ruling in respect of the following question:-^

a. Determination of correct Classification of Licensing services for the Right to Broadcast and Show Original Films,

Sound Recordings, Radio and Television Programmes etc., under SAC 997332.~

3. Admissibility of the Application: The advance ruling is sought by the applicant on the question, at para 2 supra, in respect of the issue of Classification of Licensing services for the Right to Broadcast and Show Original Films, Sound Recordings, Radio and Television Programmes etc., which is covered under Section 97(2)(a) under classification of any goods or services or both and hence the application is admissible under Section 97(2)(a) of the CGST Act 2017.

4. BRIEF FACTS OF THE CASE: The applicant furnishes the following facts relevant to the issue:

4.1 The Applicant is a Film Exhibitor, registered under GST. They are into the business of Exhibition of Movies in theatres by taking the theatres on lease and operating the theatre. They collect GST on tickets and discharge the same. The applicant proposed to enter into the business of Licensing services for the right to broadcast and show original films, sound recordings, radio and television programmes etc., and thus filed the instant application.

4.2 The applicant submitted that there are seven stages that lead to production of the film and up to the point of distribution namely Development, Financing, Pre-production, Production, Post-production, Marketing and Distribution and confined to the issue of Movie/Film distribution and furnished the following note on it.-

a) Film Distribution is the process of making a movie available for viewing by an audience. This is normally the task of a professional film distributor, who would determine the marketing and release strategy for the film, the media by which a film is to be exhibited or made available for viewing and other matters. The film may be exhibited directly to the public either through a movie theatre or television- or personal home viewing (including physical media, video-on-demand, download, television programs through broadcast syndication).

b) A distributor is responsible for the marketing of the film. The distribution company may be the same with, or different from, the production company. The distributor may set the release date of a film and the method by which a film is to be exhibited or made available for viewing, directly to the public either theatrically or for home viewing. A distributor may do this directly through theatrical exhibitors and other sub-distributors. The arrangements for exhibition of films, generally in the film industry is that the producer of a film, who wants the intellectual property rights in the films transfers the copyrights to the distributor. The producer, enters into an agreement with the distributor to enable exhibition of the film, who has two options i.e. (i) the assignment of rights received by the distributor, from the producer, are transferred to the exhibitors and (ii) exhibitor releases the exhibition/the distributor rights for a certain period but these rights are still retained by the distributor which is released only for a certain period. In both these arrangements the consideration is generally by way of profit share. In other words licensing services are those where the owner of the rights in the specified works, assigns it to the distributor. Under this arrangement the important aspect is that can be either the assigner transferring his rights by way of an assignment and in the process of this assignment such assigner gives away his right to the assignee. Such an arrangement can be perpetual or for a specified period.

c) The contending service classifications are 997332 and 999614. The SAC 997332 relates to license services for the right to broadcast and show original films, sound recordings, radio and television programs. The other option is merely releasing the rights to exhibit the films where the rights are not transferred by the owner but the assignee is only given the right to exhibit the films or programs the distributor still owns the rights as the transfer is by way of lease. According to our understanding the distributor is the dealer for the provision of licensing for the right to broadcast service and show original films which include sound recording. This license also includes right to reproduce, distribute and show original films etc. To the best of our understanding this licensing service is rightly classifiable under the SAC 997332 as per GST Act 2017. However, the applicant claimed that the Department is of the view that the nature of agreement between the distributor and the exhibitor would still remain a distribution service and not a licensing agreement as the consideration is still a revenue share or a commission. The Department has failed to note that the classification is not determined on the basis of the manner of determination of consideration for the service, but depends on the nature of agreement between the parties and also on what kind of rights and liabilities which creates from them. The attempt by the Department to classify the distribution service under SAC 999614 is absolutely incorrect and merits no consideration. Some of the inspecting officers are mis-interpreting the said service as falling under SAC 999614. Thus, the correct classification is prayed for through the instant application.

d) The classification of film distribution throughout India is under SAC 9973 attracting a GST @12%, which is followed and approved by all the GST authorities. Applicant furnished copies of invoices collected from distributors all over the country, in support of their contention, which would makes it clear that it is an accepted classification, classified according to the scheme of classification of film distribution under 9973 only.

e) The explanatory notes to the scheme of classification of services stipulates that "where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description". Thus, in terms of the explanatory notes, it becomes crystal clear that SAC 9973 is more specific to that of SAC 9996 as it relates to Motion Picture, Videotape and television program distribution services not at all relating to Recreational, cultural and sporting services and specially concerning audiovisual and related services. The SAC 9973 if related to entertainment industry and SAC 9996 is related to Recreational, cultural and sporting purpose and relates to audio visual service pertaining to this heading alone.

f) Entertainment industry is a group of sub-industries devoted to entertainment, used to describe the mass media companies that control the distribution and manufacture of mass media entertainment. Generally it includes the fields of theatre, film, fine art, dance, opera, music, literary publishing, television and radio. The common element found in all these fields is the fact that they engage in selling or otherwise profiting from creative works or services provided by script writers, song writers and other artists. It is also commonly known as show business or show biz.

g) Recreation is state of response or an activity that restores the capacity to work. Physiologically, it is a state of specific activity when the cell, having no work to perform, restores its normal composition. Regular alternation of periods of work and recreation helps strengthen the conditioned reflexes crucial to a person's behavior and work activity. Hardening of the body, physical training, sports and travel are important means of recreation. Recreation areas are used to organize optimal rest and recreation at health resort and houses of rest also helps to restore work ability.

h) The classification of the services will be under the heading to that service to which they are most akin. Therefore we are of the opinion that film distribution comes under SAC 997332 since we give licence to the exhibitors to broadcast and show original films and also as our activity clearly fits into the definition. Whereas, SAC 9996 relates to "Recreational, Cultural and Sporting Services". The sub-heading relates to audio visual related services, performing arts and other live entertainment, performance by artists, museum and preservation services, services of athletes and related support services, amusements etc., Therefore, as per our opinion, the classification under SAC 997332 is most specific and appropriate and is in accordance with the classification of services under GST.

i) It is our humble submission that Film distribution service which includes leasing and licensing of films for exhibition in theatres is classified under SAC 997332, all over India, and is more specific, appropriate and there is no ambiguity at all and also in view of the fact that the services are related only to entertainment industry and not connected to recreation, cultural and sports.

j) The primary objective of the GST Act is to raise the revenue, resort should not be had, for purpose of classification to the scientific and technical meaning of the terms and expressions used therein, but to their popular meaning, that is to say, the meaning attached to that by those using the product. The burden of proof that a product is classifiable under a particular tariff head is on the revenue and must be discharged by proving that it is so understood by the consumers of product in common parlance -CCE Vs Vicco Laboratories 2005(179)ELT (SC 3 member bench). Criteria for classifications are given in the Tariff. However, basic principle of classification, devised more than a century ago by Justice Pollok in Grenfell Vs IRC (1876) 1 Ex D 242 continues. As per this principle, a word in statute should be construed in its popular sense and not in the strict technical sense, 'Popular Sense' means that which people conversant with the subject matter with which the statute is dealing would attribute to it.

k) The theory of Trade Paralance states that A word in statute should be construed in its popular sense, 'Popular Sense' means that which people conversant with the subject matter with which the statute is dealing would attribute to it. "Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature". The test ignores the technical meaning or scientific meaning if open market exists for the commodities commonly traded.

l) The Courts and Tribunals in India have evolved different parameters and tests to resolve the classification disputes based on the dispute under consideration.

The Supreme Court in OK Play (India) Ltd., Vs CCE [(2005) 180 ELT 300] has laid down that there is no universal test or static parameter for the correct classification of goods or services. Moreover, the HSN code, including the explanatory notes, provides guidance for the classification of an entry along with general rules of interpretation under the Customs Tariff Act (hereinafter referred to as the "CT Act"). In case of ambiguity, necessary assistance can be taken from a functional utility, design, shape and predominant usage, including name used in common parlance.

The common parlance approach means that the 'word' shall be construed in the same way, which is used by the common public who uses it. Whether a particular service will fall within a particular category of tariff rate has to be decided on the tangible material or evidence to determine legislative intent while enacting it.

In Gulati & Co. Vs CST [2014 14 SCC 286] the issue raised was whether Tood essence and food colour' used in manufacturing of food & foodstuff would fall within Entry 56 of the Notification No.ST-2-7218/10/6(43)/77. The Supreme Court held that Toodstuff shall be given its natural meaning according to day-to-day affairs i.e. anything with nutritive value consumed for sustaining one's life. Furthermore, Tood essence' is added only for ornamental value. They have no nutritive value and hence cannot be considered as foodstuff in Entry 56.

The Bombay High Court in Nirlon Synthetic Fibres Vs UOI [(1999) 110 ELT 445] observed that the common parlance test can only be used by the courts when the tariff rates & explanatory notes are ambiguous and not in any other case.

In CCE Vs Wood Polymers Ltd., [(1998) 97 ELT 193], the Supreme Court held that the classification under the CT Act is primarily based upon parameters laid down in the Act itself, followed by description attached to Section Notes, Chapter Notes read with Explanatory 8s Exemption.

Hon'ble Karnataka High Court in the matter of Diebold Systems Pvt. Ltd., Vs The Commissioner of Commercial Tax on 31 January 2005 Equivalent citations : ILR 2005 KAR 2210, 2006 144 STC 59 Kar while deciding that ATM machine is not a computer or computer terminal but an electronic device held as follows:

"An Automatic Teller Machine, in our view, is an electronic device, which allows a bank's customer to make cash withdrawals, and check their account balances at any time without the need of human teller, probably that most widely used means of "electronic funds transfer". From the literature and the books on computers produced before us, we are of the view, that ATM is not a computer by itself and it is connected to a computer that performs the tasks requested by the person using ATMs. The computer is connected electronically to many ATMs that may be located from some distance from the computer. In common parlance, it is understood as electronic device and therefore, the revisional authority is justified in holding that ATMs are electronic goods and the levy of tax and the sale of ATMs requires to be made under the entry 4 of part 'E' of Second Schedule to the Act"

m) The process of interpretation of the entry for the purpose of classification of the goods to arrive at the correct tax rate is a subjective process and it's hard to lay down fixed criteria for the same but general conclusions from above discussion can be culled out as follows:-^

(i) There are following tests which are commonly applied for classification of goods for the purpose of levy of tax on goods which have not been defined under the Act i.e. Common Parlance Test, Commercial Parlance Test, Commonsense Test or Commonsense rule of interpretation and user Test or Functional Test.~

n) In view of the aforementioned submissions it is respectfully prayed that the classification of film distribution service i.e. licencing services for the right to broadcast and show original films, sound recording under SAC 997332 is maintained and held to be correct, specific and appropriate as it is in accordance with the scheme of classification of services under GST law.

PERSONAL HEARING PROCEEDINGS HELD ON 13.07.2023

5. Sri V R Balasubramani, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application and also furnished the written submissions.

FINDINGS & DISCUSSION

6. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters 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.

7. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

8. The applicant is an exhibitor of films and intends to venture into the business of distribution of films for exhibition in theatres. Therefore, the applicant sought advance ruling in respect of the classification of the intended service. They contend that their service falls under Licensing sendees for the Right to Broadcast and Show Original Films, Sound Recordings, Radio and Television Programmes etc., and hence is covered under SAC 997332. Further the applicant also furnished the competing classification under SAC 999614 which covers Motion Picture, Videotape and television programme distribution service.

9. The Explanatory Notes to the scheme of classification of services indicate the scope and coverage of the heading, groups and service codes, which are a guiding tool for classification of service. The Explanatory Notes stipulate that where a service is capable of different treatment for any purpose based on its description, the most specific description shall be preferred over a more general description. Thus we proceed to examine, analyse, discuss the classification of the impugned service, in the light of the aforesaid explanatory notes, for which we invite reference to the relevant headings, which are as under:

9973 - Leasing or rental services without operator

This heading includes:-^

- rental or operational leasing of machinery and equipment and personal and household goods, without operator.~

Note: The duration of the rental service is irrelevant for its classification.

This heading does not include:-^

- leasing services of machinery and equipment of personal and household goods on a purely financial service basis (i.e. financial leasing), cf. 997114~

99733 - Licensing services for the right to use intellectual property and similar products

This group includes permitting, granting or otherwise authorizing the use of intellectual property products and similar products

Note: This covers rights to exploit these products, such as licensing to third parties; reproducing and publishing software, books, etc.; using patented designs in production processes to produce new goods and so on. Limited end user licences, which are sold as part of a product (e.g., packaged software, books) are not included here.

This group does not include:-^

- licence fees as integral part of consumer goods (e.g., end-user licenses for books, records, software)
- preparation, drafting and certification services concerning patents, trademarks, copyrights and other intellectual property rights, cf 998213
- legal services related to drawing up or certification of patents, trademarks, copyrights and other intellectual property rights, cf. 998213
- management services for copyrights and their revenues (except from motion pictures), cf. 998599
- management services for rights to industrial property (e.g., patents, licences, trademarks, franchises etc.), cf. 998599
- management services for motion picture rights, cf 999614
- management services for artistic rights, cf 999629~

997332 - Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme etc.

This service code includes:-^

- licensing services for the right to reproduce, distribute or incorporate entertainment, musical such as broadcasting and showing of original films, sound recordings, radio and television programmes, prerecorded tapes and videos~

Explanatory notes pertaining to competing classification :-^

9996 - Recreational, cultural and sporting services

99961 - Audiovisual and related services

999614 - Motion picture, videotape and television programme distribution services~

This service code includes:-^

i. distribution of audiovisual works, including granting permission to exhibit, broadcast and rent audiovisual works that are implicitly or explicitly protected by a copyright owned or controlled by the licensor, usually intended for theatres, television, home video market etc., such as live action or animated films, videos, digital media, etc.

ii. management sendees for motion picture rights

Note: This product is transacted between the distributor and the exhibitor, television network, television station, video rental store etc.

This service code does not include: - licensing services (by the copyright holder) for the right to reproduce, distribute or incorporate audiovisual originals, cf. 997332~

10. The applicant admittedly intends to enter into the distribution of the films by way of licencing the said film only for the purpose of exhibition in theatres. Therefore, undoubtedly, the licence is related to exhibition of the films and hence the purpose of the licence is only for exhibition. In the light of this, we proceed to decide the classification of the impugned service, for which we refer to the explanatory notes to the scheme of classification of services.

11. It is observed that SAC 9973 deals with the Leasing or Rental services without operator, SAC 99733 deals with Licensing services for the right to use intellectual property and similar products and SAC 997332 deals with Licensing sendees for the right to broadcast and show original films, sound recordings, radio and television programme etc. Further, it is specified that the service falling under SAC 997332 includes licensing services for the right to reproduce, distribute or incorporate entertainment, musical such as broadcasting and showing of original films, sound recordings, radio and television programmes, prerecorded tapes and videos.

12. From the above it is observed that the service covered under SAC 997332 is for licensing the right to distribute and show original films by way of broadcasting the same. In the instant case, admittedly, licence is given by the distributor to the exhibitor for the purpose of exhibition in theatres, which means the exhibitor can only show the film by exhibiting the same in a theatre but cannot broadcast the same and show the film. At this juncture it is pertinent to mention here that term broadcast means to send out or transmit (something, such as a program) by means of radio or television or by streaming over the Internet for general public reception. The exhibitor in the instant case merely exhibits the film in a theatre but does not broadcast the said original film and show it. Thus the SAC 997332 is not appropriate and applicable to the instant case.

13. Now we proceed to examine the competing/alternate classification covered under SAC 999614. We observe that SAC 9996 deals with Recreational, cultural and sporting services, SAC 99961 deals with Audiovisual and related services and SAC 999614 deals with Motion picture, videotape and television programme distribution services. Further, Explanatory Notes specify that the services covered under SAC 999614 includes (i) distribution of audiovisual works, including granting permission to exhibit, broadcast and rent audiovisual works that are implicitly or explicitly protected by a copyright owned or controlled by the licensor, usually intended for theatres, television, home video market etc., such as live action or animated films, videos, digital media, etc. and (ii) management services for motion picture rights. Also, the Note to the said SAC stipulates that "This product is transacted between the distributor and the exhibitor, television network, television station, video rental store etc. ".

14. In the instant case, the applicant obtains the distribution licence of the film from the producer and thus owns the copyright of the said film through the licence. The applicant in turn licences the exhibitor granting permission to exhibit the film, usually intended for theatres. It is pertinent to mention here that the film is included in the audiovisual works. Also the Note to the SAC 999614 stipulates that the transaction between the distributor and exhibitor is covered under the said SAC. The applicant in the instant case licences/grants permission to the exhibitor to exhibit the film and hence the impugned service is squarely covered under the SAC 9614 and is the most specific classification.

15. The applicant contended that the impugned services are not covered under recreational, cultural and sporting services whereas the actual fact as per the explanatory notes is Motion picture distribution services are part of audiovisual related services and in turn audiovisual services are part of recreational, cultural services. Thus the applicant's contention is not acceptable.

16. The applicant also contended that the impugned services are classified all over India under SAC 997332 and hence the services merit classification under the said SAC as per the Trade Tariff / Common Tariff. We find that Trade Tariff / Common Tariff test can be used only when the scheme of classification as per the Service Accounting Codes is ambiguous. In the instant case, we find that the service of distribution of films is squarely covered under SAC 999614. Applicant also relied upon certain case laws which are on classification of the goods and hence they are not applicable to the instant case.

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

RULING

The classification of licencing services of distribution of rights to exhibit the film by the distributor to the exhibitor are classified under SAC 999614.

(Dr. M.P.Ravi Prasad)

Member

Place: Bengaluru

Date: 15-09-2023

(Kiran Reddy T)

Member