

T, No-22/2019-20

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

**Advance Ruling No. KAR ADRG 37/2020**

**Dated : 22.05.2020**

Present:

1. Dr.M.P.Ravi Prasad  
Addl. 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. NCS Pearson Inc. C-1/65, IInd Floor, Ashok Vihar Phase II, Delhi-110052
2.	GSTIN or User ID	9918USA29031OSC
3.	Date of filing of Form GST ARA-01	07.01.2020
4.	Represented by	Sri. Harish Bindumadhavan, Advocate and Duly Authorised Representative
5.	Jurisdictional Authority - Centre	OIDAR Division, Bengalure West Commissionerate
6.	Jurisdictional Authority - State	-
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 vide CIN No. HDFC19122900051678, dtd.06.12.2019 and Rs 5,000-00 under SGST Act vide CIN No. HDFC19082900414756dtd23.08.2019

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s. NCS Pearson Inc. with User ID number 9918USA29031OSC, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of the 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.



NCS Pearson Inc

2. Hon'ble High Court of Delhi in the case of NCS Pearson Inc vs Secretary, Department of Revenue and others (WO (C) No.12352/2019) has directed the respondents to entertain the physical application of the petitioner to seek advance ruling which may be made within a week. The petitioner is permitted to deposit the fee for advance ruling and provide physical challan to the respondent along with his application. The application shall be processed and considered by the appropriate jurisdictional authority.

3. The applicant is a supplier of OIDAR services and the registration has been allotted at the Principal Commissioner of Central Tax, Bengaluru West, who has been designated for the grant of registration in such cases. Hence the matter is heard.

### STATEMENT OF FACTS

4. NCS Pearson Inc.,( hereinafter referred to as 'the applicant'), a Minnesota Corporation, having its registered office at 5601 Green Valley Drive, Bloomington, Minnesota - 55437, USA, , has a business division 'Pearson VUE' engaged in the provision of computer based test (alternatively referred to as 'exams') administration solutions to its clients (test sponsors) like educational institutes, professional licensing organizations, etc.

5. The activities undertaken by the applicant in performing the services and delivery to its clients broadly include the following:

- a) **Software development services** - the applicant provides electronic software to enable candidates (alternatively referred to as 'test-takers') to take the online test on such electronic platform;
- b) Appointment or establishment of test centers worldwide in cities or other locations where candidates can take the online exam;
- c) Test / exam registration services;
- d) Test delivery;
- e) Exam scoring;
- f) Data management and score distribution;
- g) Test center channel management;
- h) Maintenance and support services.

6. Applicant offered three types of test-administrative solutions on behalf of its clients to the test-takers in India. Test-takers are typically individual candidates across the world including candidates from India, who are not registered under the Central Goods and Services Tax Act, 2017. The three types of test are described below:

#### **Type 1 Test:**

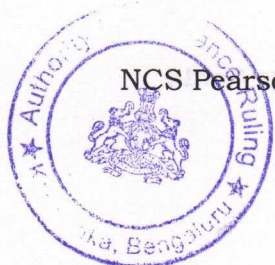
6.1 Tests that are *self-administered* by the candidates ('test-takers') and are wholly digital in nature. The test contains only multiple choice questions. The test-taker uses an Internet browser for the entire process ranging from creating a personal profile, selecting the desired test, remitting payment, taking the test, scoring and viewing results. The tests are not required to be taken from the test centers and can be taken from any location as desired by the candidate. The scores are provided by the electronic software based on a computer-based algorithm in its entirety and the test-taker gets the result in electronic format immediately on completion of the test. In view of this, the entire test experience is electronic without any human intervention.

### **Type 2 Test:**

6.2. These tests are similar to type 1 test regarding the creating personal profile, schedule an appointment for the test and remitting payment on the Pearson VUE website, however, with the major difference being that on the day of the test, the candidate is required to go to the test center, where an administrator will verify the identity of the candidate, validate test registration and appointment of the candidate. After that the test administrator will assign a computer to the candidate to take a test. During the test-taking process, the candidate is continuously monitored by the invigilator. While the test is in progress, the candidate is allowed to take a break with the approval of the invigilator. For instance, if the candidate wants to take a break, he/she needs to notify the invigilator by raising their hands. The invigilator will come to the candidate's desk and allow the candidate to take a break / refreshments in a supervised area. Once the break time is over, the invigilator will again do a physical check of the candidate and escort them back to the computer desk to allow the candidate to complete the test. Once the candidate has completed the test, the scores are provided by a computer-based algorithm on the electronic software and the test-taker gets the result immediately on completion of the test at the test center itself. The test administrator is responsible for sharing the candidate's printed unofficial score report. In addition to this, the entire process is recorded by cameras as a video and such video recording of the test-taker's testing session is reviewed by a test security official to validate any testing issues (or to confirm any testing suspicions) that may have arisen during the test administration.

### **Type 3 Test:**

6.3 These tests contain a mixture of multiple choice questions and analytical writing assessment section i.e. essay-based questions. For candidates from India, the test is taken at test centers in India at a computer workstation which is physically administered and supervised by an invigilator (proctor) as described in the type 2 test above. The candidates may create a profile, schedule the appointment and remit payment using a registration center (call center). The test is



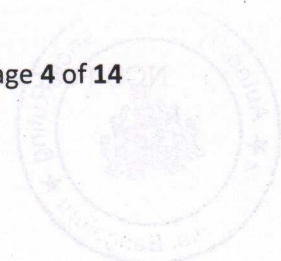
completed in parts viz. at the end of the exam, the test-taker is able to see the final score for multiple choice questions and an indicative score (which is not final) for essay based questions marked by the computer-based algorithm. However, the essay based questions are then sent to a human-evaluator in the USA for assessment and final scoring. In addition to this, in case where the difference in score for a single essay question between the electronic computed based algorithms scoring vis-à-vis human scoring is more than 1 point, then the essay based questions are again sent to an expert evaluator for assessment and scoring. Once the entire aforesaid scoring activity is completed, the test-taker is then e-mailed a URL to access their official score, typically within a week's time.

7. Applicant submitted that each of these 3 tests are priced separately. Candidate has to select a test of their choice based on their need for certification and pays to the applicant for the same. In order to take the test, a candidate has to select, register and pay for the desired exam on the applicant's electronic portal (website). Once the registration process is complete. The candidate is assigned a date, time and location of test center (if applicable) to take the test. Applicant further submitted that the test content (questions and format) is designed and provided by its clients and applicant acts as an intermediary, wherein it collects payments from the students on behalf of its clients and provides the electronic platform (software license) to enable the candidates (test-takers) to take the test.

8. Applicant submitted that tests are owned and are the intellectual property of the clients. Exam questions and exam formats are provided to the applicant by the clients or a third party appointed by the client. The questions and exam formats are embedded in the electronic software of the applicant for delivery to the candidates. The servers for this electronic software can be accessed electronically by the candidates via the internet at the test centers or any other location. Applicant further submitted that to facilitate the delivery of tests, the applicant will also appoint or establish test centers worldwide in locations where candidates take specified online exams which requires supervision.

9. Further, in India, as applicant submitted, they entered into contractual arrangements with independent third party service providers including a subsidiary company of the applicant to act as Pearson VUE Authorized Test Centers (hereinafter referred to as 'Testing centers'). These third party service providers though independent operators have entered into a contract with the applicant to provide secure test center services to the applicant for delivery of the tests including verification of candidates identity, invigilation etc.

10. Applicant submitted that under Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'IGST Act'), the applicant is of the opinion that the



type 1 test which is entirely automated, falls under the category '**online information and database access or retrieval services**' (hereinafter referred to as 'OIDAR service') as defined under section 2(17) of the IGST Act. Further, the individual test takers (service recipients) who register for the test qualify as '**non-taxable online recipients**' in terms of section 2(16) of the IGST Act. Accordingly, in terms of section 14(1) of the IGST Act, the applicant, being a service provider located in non-taxable territory, has obtained GST registration and is discharging IGST on the supply of OIDAR service to a non-taxable online recipient in India in respect of test type 1.

11. Based on the above facts of the case, the applicant has sought advance ruling in respect of the following questions:

- a) Whether the service provided for type 2 test (the specified service) classifies as 'Online Information and Database Retrieval Services'?
- b) If the type 2 test provided by the applicant does not qualify as 'Online Information and Database Retrieval Services', whether the applicant is liable to pay integrated tax on the supply of said services to non-taxable online recipients in India?
- c) Whether the service provided for type 3 test (the specified service) classifies as 'Online Information and Database Retrieval Services'?
- d) If the type 3 test provided by the applicant does not qualify as 'Online Information and Database Retrieval Services', whether the applicant is liable to pay integrated tax on the supply of said services to non-taxable online recipients in India?

#### **Applicants Interpretation of law**

12. Applicant submitted that 'online information and database access or retrieval services' defined under section 2(17) of the IGST Act, as

2(17) "**online information and database access or retrieval services**" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as:

- Advertising on the internet;
- Providing cloud services;



- Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- Online supplies of digital content (movies, television shows, music and the like);
- Digital data storage; and
- Online gaming.

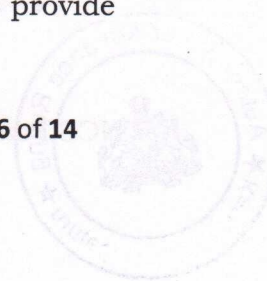
12.1 The applicant submitted that from the above definition, the following four elements are essential for a supply to qualify as OIDAR services:

1. The services are to be delivered over the Internet or an electronic network;
2. The services should be essentially automated;
3. The service should involve minimal human intervention and ;
4. The delivery of service should be impossible in the absence of information technology.

The applicant submitted that while assessing the classification of OIDAR services all the above four conditions have to be taken into account on equal basis and does not place more value to some of these elements and less to others. In the instant case, the delivery of the all the three types of test is mediated by information technology over an electronic network and the set-up of the online test is such that it is impossible to ensure supply in the absence of information technology.

12.2 The applicant submitted that in the case of Type 1 tests which are *self-administered* by the candidates ('test-takers') and are entirely digital in nature. The test-taker uses an Internet browser for the entire experience ranging from creating a personal profile, selecting the desired test, remitting payment directly to the applicant, taking the test, scoring and viewing results. The tests are not required to be taken from the test centers and can be taken from any location as desired by the candidate. In this type 1 test no invigilation is required as a result, the entire test process requires minimal human intervention and accordingly, all the criteria set out in point 10.1 above are fulfilled to categorize type 1 test as OIDAR service.

12.3 The applicant further submitted that in the case of type 2 and type 3 tests, the criteria set out in OIDAR service regarding the delivering services over the Internet or an electronic network and the delivery of said service should be impossible in the absence of information technology are fulfilled. However, in the type 2 test, the candidate is required to appear for the test at the test centres appointed by the applicant, under the physical administration and supervision of an invigilator. Although the test is to be taken electronically, it cannot take place without the physical presence of invigilator, who is required to verify candidate's identity, monitoring the candidate while he or she is sitting the test and to provide



the score report once the candidate has completed the test.

12.4 The applicant submits that a service would qualify as OIDAR service only when there is minimal or no human intervention is required. However, while conducting the type 2 test, verification of the identity of the candidates, test registration, assigning a computer to the candidate to take the test, monitor candidates during the entire testing process, addressing any queries / issues faced by the candidate at the test centre, sharing of the candidate's score report after the exam and video recording of the candidate's testing session also be done which is reviewed by a human test security official to validate any testing issues (or to confirm any testing suspicions) that may have arisen during the delivery of the test. These activities are performed by the administrator / invigilator which construe substantial (more than minimal) human intervention.

12.5 In this regard applicant submits that there is no guidance or judicial precedent available neither under the IGST Act nor the rule and regulations thereunder to understand as to what constitutes 'minimal human intervention' or to ascertain the level of human intervention. However, the law and the rules relating to taxability of OIDAR services under the IGST Act are same as that under the erstwhile service tax law. Hence, reference can be made to Circular No. 202/12/2016-Service Tax dated 9 November 2016 which provides clarification on classification and taxability of OIDAR services under service tax (attached as **Exhibit B**). This circular provides an indicative list of OIDAR services. At serial no. 16(5)(b) of the circular, it is specifically stated that workbooks completed by pupils online and marked automatically, without human intervention should be treated as OIDAR services. The relevant extract of the same is reproduced below for your ready reference:

(5) *supply of distance teaching.*

(a) *Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;*

**(b) workbooks completed by pupils online and marked automatically, without human intervention.**

12.6 In the context of the 'minimal human intervention' applicant place a reliance on the guidance issued in other countries wherein similar tax provisions exists. Applicant refer to the Guidelines agreed by the VAT Committee of the European Commission dated 28 February 2017 (attached as **Exhibit C**) to understand the notion of minimal human intervention. The guidelines state that:



- a) For the assessment of the notion of 'minimal human intervention' it is the involvement on the side of the supplier which is relevant and not that on the side of the customer;
- b) Where each individual supply made to the customer requires human intervention on the side of the supplier it should be seen as involving more than just 'minimal human intervention'.

Hence the applicant submitted that type 2 test involves human involvement in the form of test administration and invigilation on the side of the supplier i.e. the applicant and the above criteria applies in the applicant's case to treat the type 2 test as involving more than minimal human intervention.

12.7 Further, applicant highlight a couple of comparable examples assessed by the VAT committee of the European Commission for classification of OIDAR services and applicant concluded that type 2 test in the applicant's case wherein individual human intervention is required for each individual candidate to ensure the verification of identity of each of the candidate, allotting the place to seat to each of the candidate, monitoring each of the candidate through video cameras and providing each of the candidate with their unofficial test scores for delivery of test and hence, the same results in more than minimal human intervention. Based on the said grounds, the applicant submits that Type 2 test should not qualify as OIDAR service.

12.8 The applicant further submitted that the type 3 test is similar to type 2 test with the only difference being that these tests contain a mixture of multiple choice questions and analytical writing assessment section i.e. essay-based questions. The test-taker is able to see the final score for multiple choice questions and indicative score for essay based question marked by the computer-based algorithm. However, the essay based questions are then sent to a human-evaluator in the United States of America (USA) for assessment and final scoring. In addition to this, in case the difference in score for a single essay question between the electronic computed based algorithms scoring vis-à-vis human scoring is more than 1 point, then the essay based questions are again sent to an expert evaluator for assessment and scoring. Therefore, in the type 3 test in addition to the physical presence and supervision of the invigilator, human intervention is also required for evaluation and scoring of essay-based questions (by 1<sup>st</sup> stage evaluator) and also for the expert evaluation if the difference in scores provided by the computers algorithm and 1<sup>st</sup> stage human-evaluator is more than 1 point.

12.9. The applicant submitted that type 3 test is an extension of type 2 test and similarly requires more than minimal human intervention in order to complete the provision of the service. In this regard applicant again place a reliance on Circular No. 202/12/2016-Service Tax dated 9 November 2016 providing clarification on

taxability and classification of OIDAR service by referring serial no. 16(5)(b) of the circular.

12.10. Therefore, the applicant submitted that the taxability criteria of OIDAR services under the GST regime remains the same as prevalent under the service tax regime. Thus, it can be understood that automatic marking is critical for a service to qualify as OIDAR service and hence, if the marking is done by a human evaluator then this will involve more than minimal human intervention and hence, will not qualify as OIDAR service. Hence, the applicant submits that Type 3 test should not qualify as OIDAR service.

12.11 The applicant further submitted regarding the taxability of the type 2 and type 3 tests. The applicant is an entity registered under Central Goods and Services Tax, 2017 with a place of business in USA and does not have its own place of business or fixed establishment in India. Therefore, the location of the supplier in terms of section 2(15) of the IGST Act, 2017 is outside of India. Further the recipients of the service are located in India and in terms of section 13(2) of the IGST Act, the place of supply for type 2 and type 3 test would be the location of service recipient i.e. location of candidates which is in India. Accordingly, supply of type 2 and type 3 test from outside India to candidates in India would be treated as an import of services and inter-state supplies in terms of section 2(11) and 7(4) of IGST Act, respectively. In this regard, applicant submitted that as per serial no. 1 of Notification 10/2017-Integrated Tax (Rate) dated 28 June 2017, any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient is taxable under reverse charge mechanism in the hands of the service recipient who is a person other than non-taxable online recipient.

12.12 Further, the applicant submitted that in terms of serial no. 10(a) of Notification No. 9/2017-Integrated Tax (Rate) dated 28 June 2017, an exemption is provided on services (other than OIDAR service) supplied by a provider of service located in a non-taxable territory to an individual in relation to any purpose other than commerce, industry or any other business or profession. Accordingly, for the type 2 and the type 3 test, IGST would either be exempt in case of supply by the applicant to non-taxable online recipient or taxable under reverse charge mechanism in case of supply to other than non-taxable online recipients. Based on the above provisions of the IGST Act and the notifications issued thereunder, applicant submitted that the applicant is not responsible to collect and pay IGST on supply of service in type 2 and type 3 test to recipient in India.



**PERSONAL HEARING: / PROCEEDINGS HELD ON 09.01.2020**

13. Sri Harish Bindhumadavan, Advocate and DAR of the above concern appeared for personal hearing proceedings on 09.01.2020 before this authority.

**FINDINGS & DISCUSSION**

14. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by them during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

14.1 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act 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 same provisions under the KGST Act.

14.2 The applicant is an intermediary located in non taxable territory and provides services of online exams/tests via electronic software to the non taxable online recipients in India which he has classified into three categories. For activities mentioned under Type1, the applicant is clear regarding the taxability and has approached the Authority only for Type 2 and Type 3 activities performed by them. In the following paras, we will discuss Type 2 and Type 3 activities as mentioned by the applicant.

14.3. The test taker in TYPE 2 needs to create a profile, schedule an appointment for the test and remit payment on the applicant's website or using a registration center (call center) available at some of the testing centers within the geographic location of the candidate. On the day of the test the candidate is required to go to the test center, where an administrator will verify the identity of the candidate, validate test registration and appointment of the candidate. Once this initial check is completed, the test administrator will assign a computer to the candidate to take a test. During the test, the candidate is continuously monitored by the invigilator. While the test is in progress, the candidate is allowed to take a break with the approval of the invigilator. Once the break time is over, the invigilator again do a physical check of the candidate and escort them back to the computer desk to allow the candidate to complete the test. Once the candidate has completed the test, the scores are provided by a computer based algorithm on the electronic software and the test taker gets the result immediately on completion of the test at the test center itself. The test administrator is responsible for sharing the candidate's printed unofficial score report. In addition to this, the entire process is recorded by cameras and such video recordings of the test taker's testing sessions

is reviewed by a test security official to validate any testing issues (or to confirm any testing suspicions) that may have arisen during the test administration.

14.4 The applicant's view is that the above activities mentioned under Type 2 does not fall under OIDAR. The applicant has argued that OIDAR consists of four essential components:

- a. services are to be delivered over the internet or an electronic network and;
- b. Rendering of services should be automated and;
- c. services should involve minimal human intervention and;
- d. The delivery of service should be impossible in the absence of information technology.

According to the applicant, the presence of the test administrator at the testing centers who is responsible for verifying candidate's identity, monitoring him during the test and providing the test report once the candidate has completed the test requires more than the minimal human intervention. For this, he relies upon Guidelines agreed by the VAT Committee of European Commission dated 28.02.2017 where the notion of minimal human intervention is discussed in detail and explained with illustrations. The applicant have specifically relied upon the following guideline:

*Where such individual supply made to the customer requires human intervention on the side of the supplier it should be seen as involving more than just minimal human intervention.*

Here, the applicant has interpreted the guideline quite literally by stating that the administrator is verifying the identity of each individual test taker. However, we understand that the Commission is more focused on catering to every individual and thereby a distinct need of the service recipient in a specific manner by the supplier will make the activity something more than minimal human intervention. This is evident from para 2.2 (6) & (9) of Guidelines agreed by the VAT Committee of European Commission dated 28.02.2017 which are reproduced below:

*The activity of (a) real person(s) organized by the supplier of services ( like for example a person spinning the wheel of the roulette or drawing physical cards to play black jack or baccarat), performed independently from the requests made to provide a particular supply to an individual customer, is to be seen as falling within limits of 'minimal human intervention'. ....*

*The general approach proposed is that where the human activity on the side of the supplier focuses on the whole environment of the system and not on individual requests from customers this should not be seen as trespassing the requirement of 'minimal human intervention' included in the definition of electronically supplied services.*



We note here that human activity on the side of the supplier is focused on the whole environment, i.e. the whole test center and not on specific need of individual test takers. The illustrations provided by the applicant are also distinguished by the fact that human interventions in the illustrations happen for the main service whereas in the present case, administrator is not directly intervening where they can make a difference in the scores achieved by the test takers.

14.5 The applicants argue that it is impossible to complete the provision of service in the absence of administrators since verification and registration of the candidates is undertaken by them. However, we observe that provision of taking tests online at designated test centers are naturally bundled activities and are supplied in conjunction with each other in the ordinary course of business and therefore can be termed as Composite Supply as per Section 2 (30) of CGST Act, 2017. Here, since the main object of the whole activity is to take online tests, so the principal supply would be OIDAR service provided by the applicant to non taxable online recipients.

14.6 Type 3 tests are similar to Type 2 tests with the only difference being these tests contain a mixture of multiple choice questions and analytical writing assessment sections, i.e. essay based questions. The test taker is able to see the final score for multiple choice questions and indicative score for essay based questions marked by computer based algorithm. However, the essay based questions are then sent to a human evaluator in the USA for assessment and final scoring. In addition to this, in case the difference in score for a single essay question between the electronic computed based algorithms scoring vis-a-vis human scoring is more than one point, then the essay based questions are again sent to an expert evaluator for assessment and scoring.

14.7 The applicant has argued that since the final score of the candidate is provided only after human intervention, Type 3 tests requires more than minimal human intervention in order to complete the provision of the service. They have also relied upon CBEC Circular No. 202/12/2016-Service Tax dated 09.11.2016 and flyer prepared by NACEN for reference on OIDAR under GST.

14.8 We observe that Board has provided an indicative list of OIDAR Services and among others, we quote the following relevant service:

*Workbooks completed by pupils online and marked automatically, without human intervention.*

We note that since tests are scored after human intervention in type 3, it should be outside the purview of OIDAR. Infact, the second example provided by the applicant in the grounds of applications while discussing Type 2 case, helps and fits in type 3 scenario.

14.9. The applicant have asked that if their activity under type 2 or type 3 tests are not falling under OIDAR Services, then is tax to be paid on RCM as per Sl. No. 1 of Notification No. 10/2017-IGST (R) dated 28.06.2017 or will the activity be considered exempted in terms of Sl No. 10 of Notification No. 09/2017-IGST (R) dated 28.06.2017.

14.10. Sl No. 10 of Notification No. 09/2017-IGST (R) dated 28.06.2017 exempts Services ( not including OIDAR services) received from a provider of service located in a non- taxable territory by the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession. Sl. No. 1 of Notification No. 10/2017-IGST (R) dated 28.06.2017 provides for payment of tax on any recipient when service is being supplied by any person who is located in a non taxable territory and is engaged in providing any service to any person other than non taxable online recipient.

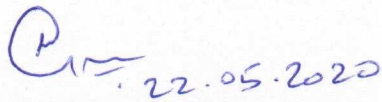
14.11. Serial No.1 of Notification No.10/2017 - IGST (Rate) dated 28-06-2017 is only shifting the liability to pay tax from the hands of the supplier to the recipient. It does not create any liability. We have to first see whether there is any liability and if there is a liability to pay tax on a particular transaction then the liability to pay tax on that transaction would shift from the usual supplier to the exceptional recipient as per Notification No. 10/2017-IGST (Rate) dated 28-06-2017. If the transaction itself is exempt, there is no liability on the recipient of service. Since Type 3 is not an OIDAR service, there wont be any special liability on the supplier located outside India and hence the entire transaction is exempted both in the hands of the supplier and also the recipient by virtue of Sl No. 10 of Notification No. 09/2017-IGST (R) dated 28.06.2017.

15. In view of the foregoing, we rule as follows:

**RULING**

- a. The service provided for type 2 test classifies as OIDAR Services.
- b. Nil in view of (a) above
- c. Service provided for type 3 test does not classify as OIDAR Services.
- d. IGST is exempted by virtue of Sl. No. 10 of Notification No. 09/2017-IGST (Rate) dated 28.06.2017.

  
**(Dr.M.P.Ravi Prasad)**  
**Member MEMBER**  
 Karnataka Advance Ruling Authority,  
 Bengaluru - 560 009

  
**(Mashhood Ur RehmanFarooqui)**  
**Member MEMBER**  
 Karnataka Advance Ruling Authority  
 Bengaluru - 560 009

Place : Bengaluru,  
 Date : 22.05.2020

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, Bangalore West Commissionerate, Bengaluru, first Floor, BMTC Building, Banashankari, Bengaluru.
4. Office Folder.



**RULING**

(Signature)  
 Member  
 Karnataka Advance Ruling Authority  
 Bengaluru - 560 002

(Signature)  
 Member  
 Karnataka Advance Ruling Authority  
 Bengaluru - 560 002

Place : Bengaluru  
 Date : 22.05.2020