

Supply of law journals on DVD, not an e-book

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The Tamil Nadu Authority for Advance Ruling examines if law journals / books / periodicals embedded on DVD / CD (“DVDs”) and provided along with a user based software can be considered to be an ‘e-book’ eligible for levy of GST at a reduced rate of 5% under the notification no. 13/2018 - Central Tax (Rate) dated July 26, 2018 (“the notification”).

Questions for determination

- Whether the supply of law journals / books / periodicals embedded on DVDs along with a user based software to search and read it on computers and hand held devices can be considered to be an ‘e-book’ eligible to discharge GST at the reduced rate of 5% under the notification?
- Whether the GST liability on the sale of DVDs / pen drives and e-books which have printed versions of law citations can be adjusted against the available Input Tax Credit (ITC)?

- Whether the ITC balance remaining after the adjustments can be reversed in the annual return in Form GSTR-9?

Discussion

- The Authority of Advance Ruling pronounced that only the question of applicability of the notification is amongst questions on which an advance ruling can be sought under section 97(2) of the Central Goods and Service Tax Act, 2017 (“CGST Act”). Consequently, the advance ruling is restricted to determination of the first question of classification and applicable rate.
- The Applicant supplies printed law journals containing judgments of the Hon’ble Supreme Court and the Madras High Court in print and in electronic form of DVDs along with a dongle as a security lock with proprietary software and on their website with an authorised login ID and password. For the law journals provided on DVDs updates are supplied online when the customer connects to the internet; the dongle acts as a key and has software installed on it which allows the application to be updated and used. The Applicant discharges GST at the rate of 18% on such supplies.

¹ Order no. 13/ARA/2020 dated February 27, 2020



- The development of e-books (journals / books) along with the software has been entrusted to a vendor. The vendor charges GST on such supplies to the Applicant. The Applicant in turn claims ITC of the tax paid to the vendor.
- Sl. no. 22 of the notification, is amended by notification no. 11/2017 - Central Tax (Rate) dated June 28, 2017, which prescribes the rate of GST applicable on 'supply consisting **only** of e-book' as 5%.
- In the explanation to the entry at sl. no. 22 of the notification e-book is defined as "*For the purposes of this notification, "ebooks" means an electronic version of a printed book (falling under tariff item 4901 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)) supplied online which can be read on a computer or a hand held device.*"

Ruling

- The Authority observed as follows:
 - According to the brochure and the screenshots of the installation process provided, the DVD in effect contains an End User License Agreement (EULA) which is to be accepted by the user.
 - The DVD is not an electronic version of the print journals. If it was, then it would have machine readable files in any format such as .doc, .txt, .pdf or any other readable files and not the executable file (setup application) which it has. Dongle acts as a key and has some software which allows the application to be used.
 - The Applicant makes two supplies namely:
 - DVD and dongle,
 - Law Weekly Desktop Software application loaded onto the DVD and proprietary software in the dongle.
 - The software comes with EULA with weekly online updates during the period of subscription. Thus, the supply of DVDs and dongle with access for an initial subscription period is a 'composite supply' (in terms of section 2(30) of the CGST Act, 2017) involving the supply of DVD and dongle and the loaded

software (goods) along with the license to use the same for limited period (service). The principal supply is of the DVD and dongle loaded with the software.

- The DVD does not contain an electronic version of the journals but an executable software application and therefore does not fall under the definition of e-book as defined in the notification. Further, the supply of DVD (principal supply) being goods, the said notification shall not apply as the Applicant is a supplier of service.
- In the present case, the supply involves access to an online database hosted on the website of the Applicant. Thus, it is not an e-book but the supply of access to an online database of a text-based information under SAC 998431, and therefore the benefit of a reduced rate should not be available.
- Based on the observations it was concluded that supply of journals / books on DVD along with its EULA shall not qualify as e-books and therefore the benefit of a reduced rate of GST under the notification is not available to the Applicant.

Dhruva Comments:

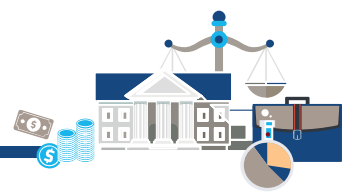
The term e-book is defined very loosely under the notification. Ordinarily an e-book is understood to be a book made available in digital form, consisting of text, images, or both, readable on the flat-panel display of computers or other electronic devices. Although sometimes defined as *an electronic version of a printed book*, it will have to be seen as to how the term e-book will be interpreted by the courts in India. Further, whether the media / technology used is looked upon only as an instrument by which to deliver the e-book or carries a separate supply element by itself, will also be factors in determining the rate of tax applicable under GST.

The ruling proceeds on the fallacious premise that the data accessed is not an e-book but an online text-based information. It is relevant to note that even an e-book is, in some sense, online text-based information. The



presumption that an e-book is a digitized book that comes in format such as .doc, .txt, .pdf etc, is misplaced and reflects a clear lack of understanding of the digital products. Where such case laws journals are bought in a physical format they would be categorized as books and would be entitled to the exemption as printed books; however, the fact that such books are digitized and equipped with a search engine should not change their characterization.

The advance ruling seems to have completely misunderstood the aspect that the principal / dominant supply is delivery of the e-book to the user, and the DVD and the software is merely a medium to ensure the access of the e-book and at the same time to ensure that the same is restricted to the subscriber.





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