
	<b>KERALA AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX DEPARTMENT</b> <b>TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF: Smt.Gayathri.P.G IRS &**  
**: Shri. Abdul Latheef K**

Legal Name of the applicant	M/s. P Achuthan Nair & Company
GSTIN	32AAGFP7234H1ZC
ARN	AD321021006050D
Address	1/233, Changuvetty, Kottakkal P.O, Malappuram, 676503
Advance Ruling sought for	1. Whether differential dealer margin provided by the petroleum companies to its retail dealers are taxable under GST as a supply of service 2. If it is taxable, then what is the justification for bringing the same under the purview of GST 3. If it is taxable, then under which rate of GST
Date of Personal Hearing	20.12.2023
Authorized Representative	Advocate T.G Madhavan Unni

**ADVANCE RULING No. KER/01/2024 Dated 10/01/2024**

1. M/s. P Achuthan Nair & Company, 1/233, Changuvetty, Kottakkal P.O, Malappuram, 676503 (herein after referred to as the applicant) is a retail dealer of petroleum products in the State of Kerala. The applicant is an authorized retail dealer of HPCL.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (*herein after referred to as CGST Act*) and the Kerala State Goods and Services Tax Act, 2017 (*herein after referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference herein after to



the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

**3. The applicant requested advance ruling on the following:**

- 3.1. Whether differential dealer margin provided by the petroleum companies to its retail dealers are taxable under GST as a supply of service?
- 3.2. If it is taxable, then what is the justification for bringing the same under the purview of GST?
- 3.3. If it is taxable, then under which rate of GST?

**4. Contentions of the Applicant:**

4.1. *The Applicant is a retail dealer of petroleum products of HPCL. Petroleum products are outside the purview of GST. The issue in this case is levying GST on "Differential Dealer Margin, provided by HPCL to the applicant. Differential Dealer Margin is actually not a discount or incentive taxable under the purview of GST. The quantum of this margin is directly related to the volume of sale of petroleum products effected by the applicant. The Differential Dealer Margin given by HPCL is inversely proportional to the volume of sales effected by each dealer. Further, it is not in the nature of any consideration for "agreeing to the obligation to do an Act" as per Serial No. 5(e) of Schedule II (Activities or Transactions to be treated as supply of goods or supply of services) in terms of Sub-section (1A) of Section 7 of the Act. It is not liable to pay GST on differential commission/ incentive on the reason that it is not a supply so as to levy GST as provided u/s. 15 of the GST Act.*

4.2. *The applicant submits that Differential Dealer Margin is credited to the account of the applicant by HPCL on the basis of the volume of sales of Petrol/Diesel which is not treated as a taxable supply under GST on the reason that it is only an incentive given after the supply has been effected, and "it is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices" as provided under Sec. 15(3) (b) (i) of the CGST Act.*



4.3. The applicant further submits that as per Sec. 9(1) of the CGST Act, 2017, tax is levied on the supply of goods or services on the value determined u/s.15. The scope of supply as defined u/s.7(1)(a) of the CGST Act, 2017 includes the supply of goods or services or both by way of sale or services made or agreed to be made for a consideration.

4.4. The applicant submits that as a condition in the contract, the original price for the sale of Petroleum Products varies subsequently to account/adjust for the discounts/ incentives on achieving certain targets or conditions. Hence such discounts/incentives are said to reduce the original price payable by the Retail outlets (dealers) on account of fulfilling certain conditions in the contract and hence cannot be considered the character of it being a consideration against any supply of services made by the dealer and hence it is not liable for payment of GST in the hands of the applicant.

4.5. The applicant further submits that the incentive received by them is not for doing any obligation to do an Act. It is not for achieving any target. The policy of the supplier, HPCL for providing margin is inversely proportional to the sales volume of the petroleum products. When the sale volume increases, the margin value will be decreases. The peculiar characteristic of this method of determining the margin reveals that it is not for 'agreeing the obligation to do an Act

4.6. The applicant relied on the judgment of Hon'ble Mumbai Tribunal in the case of Bharat Petroleum Corporation Ltd. vs. Commissioner of Service Tax (2014 (36) S.T.R. 433 (Tri. - Mumbai), it is held that discounts/ incentives/any additional margin accruing on fulfilling the conditions of the contract of sale cannot be considered a consideration for the supply of services. Also the applicant reproduced GST Circular No. 29/2019 (F 17(134) AACT/GST/2017/4596 dtd 28-06-2019, in which it is very clearly specified that "for the purpose of value of supply, post sales discounts are governed by the provisions of clause (b) of sub section (3) of Section 15. The differential dealer margin received by the applicant is a post sales discount so as to qualify the above.





4.7. The applicant submits that the sale of petroleum products is governed by section 5(a) of KERALA GENERAL SALES TAX ACT 1963 which reads as under; "5 (a) in respect of Petroleum products falling under Sl.No.1 of the Schedule, at the point of sale in the State by an oil company liable to tax under this section, except where the sale is by an oil company to another oil company and at the point of first sale in the State by a dealer liable to tax under this section when the sale is not by an oil company.-----"

All the sales of retail outlets are from out of sales in the State by an oil company and is so exempt. Similarly any connected discount / incentive on sale of petrol is also exempt as there is no provision under KERALA GENERAL SALES TAX ACT 1963, to tax the same.

4.8. The Authority For Advance Ruling West Bengal Bench in INDIAN OIL CORPORATION 2018 TAX PUB (GST) 471 (AAR-WB) clarified the issue, it is held that petroleum products are non- taxable supplies and input credit is not available. As a corollary any incentive/ differential price received related to petroleum products is also non taxable. Similar finding seen in MEENA SERVICE CENTRE VS ASST COMMR, CGST 2020 TAX PUB( GST) 1325( CIT-JP) wherein it is held that the Licence Fee paid by the recipient dealer to the supplier M/s. Indian Oil Corporation does not fall under the definition of inputs as provided under section 2(59) of CGST Act, 2017. Further, also Licence Fee is not an input for the outward supply of lubricants, Distil water and PUC (pollution under certificate).

4.9. Finally the applicant concludes that from the aforesaid provisions, judgments and findings from Advance Ruling Authorities and Courts, the Differential Dealer Margin received by the applicant on the sale of Petroleum products which are not coming under the provisions of GST Act may not be treated as a supply of service taxable under GST.

#### **5. Comments of the Jurisdictional Officer:**

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer reported that there are



no pending or decided proceedings against the applicant under any provisions of the GST Act 2017.

## **6. Personal Hearing:**

The applicant was granted opportunity for personal hearing on 20.12.2023 through Virtual Mode. Sri.T.G Madhavan Unni, Advocate and authorized representative represented the applicant, and filed detailed statement of facts along with the application. He requested to issue the ruling on the basis of the submissions made by them in the application and during the personal hearing.

## **7. Discussion and Conclusion:**

7.1. We have gone through the facts of the matter, documents on record and submissions both oral and written, made by the applicant as well as the jurisdictional officer. The questions before us are (a) whether differential dealer margin provided by the petroleum companies to its retail dealers are taxable under GST as a supply of service? (b) If it is taxable, then what is the justification for bringing the same under the purview of GST (c) If it is taxable, then under which rate of GST.

7.2. The first reason cited by the applicant in favour of his argument that he need not pay tax on the differential margin is that "*Differential Dealer Margin is not in the nature of any consideration for "agreeing to the obligation to do an act" as per Serial No. 5(e) of Schedule II (Activities or Transactions to be treated as supply of goods or supply of services) in terms of Sub-section (1A) of Section 7 of the Act*".

7.3. In this regard it is observed that Serial No: 5(e) of Schedule II (Activities or Transactions to be treated as supply of goods or supply of services) of the CGST Act, 2017 provides that agreeing to the obligation to refrain from an act, or to tolerate an act or situation or to do an act is supply of service. In the instant case the differential dealer margin is provided by HPCL to the applicant when the sales volume decreases below a mutually agreed level so that the applicant does not close down his petrol pump due to such loss. Thus the amount paid as differential dealer margin is in the nature of a consideration in return of the applicant agreeing to run the dealership despite low sales volume.



This amount is therefore in the nature of a consideration received for agreeing to the obligation to refrain from an act, and squarely falls under clause (e) of Sl No: 5 of Schedule II of the CGST Act, 2017 and hence taxable to GST. Hence, we are of the opinion that the first reason cited by the applicant for non-payment of tax is not valid. Further, in view of the above, Circular 29/2019(F 17(134) AACT/GST/2017/4596 dtd 28-06-2019 cannot be cited as a reason for non-payment tax by the applicant.

7.4. Further CBIC New Delhi vide para No: 6 of its Circular No: 178/10/2022-GST dated 03.08.2022 clarified that "*there must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration*". In the instant case HPCL provides the differential margin based on the agreement and the consideration is related to the decrease in sales volume. Differential dealer margin is given only to a dealer and not to the general public. The amount will not be paid if the applicant's sales volume touches the agreed limit or if the applicant winds up his business.

7.5. The second reason cited by the applicant is that *differential dealer margin is only an incentive given after the supply has been effected, and "it is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices" as provided under Sec. 15(3) (b) (i) of the CGST Act. Hence there is no scope for levying GST.*

7.6. However, section 15 of the Act deals with the calculation of the value of taxable supply and sub-section 3 deals with taxability of discount given on that value of taxable supply. In the instant case, the sale of petrol/diesel is not the supply under section 15 (3) as interpreted by the applicant. The taxable supply under discussion in the present matter is "agreeing to the obligation to refrain from an act", for which a differential dealer margin is given by HPCL to the applicant. Though the consideration for this supply is linked to the sales volume of petrol, it is not a discount given on the supply of petrol. Hence, section 15 (3) of the Act is not applicable in the instant case. Further, in view of





the above, GST Circular 29/2019 (F 17(134) AACT/GST/2017/4596 dtd 28-06-2019 cannot be cited as a reason for non-payment tax by the applicant.

7.7. The third reason cited by the applicant in favour of his argument that he need not pay tax on the differential margin is that “as per section 9 (2), *the central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council*” and as on date these goods are not taxable in GST.

7.8. There is no dispute that the applicant’s supply of petrol/diesel to end customer is not taxable to GST. However, as already discussed above, the supply in the present case is that of the service of agreeing to the obligation to *refrain from an act*. As per the Annexure: Scheme of Classification of Services annexed to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time, the service of “Agreeing to refrain from doing an act” is classified under Section 9, Heading 9997, Service Code (Tariff): 999793. As per Sl. No. 35 of the aforementioned notification, the same is taxable @ 18% (CGST @ 9% and KSGST @ 9%)

7.9. In this regard it is further observed in view of the above said aspects that *ratio decidendi* of the case laws quoted by the tax payer are different from that of the issue raised by the applicant in his advance ruling application and hence, not applicable in the instant case.

In view of the observations stated above, the following ruling is issued:

### **RULING**

**Question-1:** Whether differential dealer margin provided by the petroleum companies to its retail dealers are taxable under GST as a supply of service?

**Ruling:** Yes. Differential dealer margin provided by HPCL to the applicant is taxable under GST as a supply of service.



**Question-2:** If it is taxable, then what is the justification for bringing the same under the purview of GST?

**Ruling:** The question does not fall under any of the clauses under section 97 (2) of the Act, and hence no Ruling is provided for the same.

**Question-3:** If it is taxable, then under which rate of GST?

**Ruling:** The applicant is liable to pay GST at the rate of 18% (CGST @ 9% and KSGST @ 9%) as per Sl. No. 35, Chapter 99, Section 9, Heading 9997 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time.

  
Gayathri.P.G

  
Abdul Latheef K

**Joint Commissioner of Central Tax**   **Joint Commissioner of State Tax**  
**Member**   **Member**

To,

P. Achuthan Nair and Company,  
1/233, Changuvetty, Kottakkal Post,  
Malappuram, Kerala -676 503.

Copy submitted to:

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: [cccocoin@nic.in](mailto:cccocoin@nic.in); [ccu-cexcok@nic.in](mailto:ccu-cexcok@nic.in)]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The Commissioner of Central Tax & Central Excise, Thiruvanthapuram Commr.'te, GST Bhavan, Statue, Thiruvanthapuram -. (E-mail id : [commr-tvmhqrs@gov.in](mailto:commr-tvmhqrs@gov.in) )

Copy to:

1. The Commissioner of Central Tax and Central Excise, Kozhikode.
2. The Joint Commissioner, TPS, HQ.
3. The Deputy Commissioner, ITMD, Thiruvananthapuram for uploading in the website.
4. The State Tax Officer, Tax Payer Services Circle, Kottakkal .
5. Central Tax, Malappuram Range, Malappuram Division

