www.TaxGrid.in

TAX GRID

SERIES ON

ADVANCE RULINGS

M/s SPSS South Asia Private Limited



KAR ADRG 15/2021 - M/s SPSS South Asia Private Limited

Facts:

The applicant is a Private Limited Company which is a pure trader in IBM SPSS software and doesn't develop/ modify any software prior to selling it to a customer. It supplies the same to various publicly funded research entities.

Questions Raised:

Whether the supply of **licenses for internet downloaded software** will be covered by Notification No. 47/2017 Integrated Tax (Rate) dt. 14.11.17 or Notification No. 45/2017 Integrated Tax (Rate) dt. 14.11.17?

Analysis and Conclusion:

The notifications referred to by the applicant provide rate of CGST/IGST @5% if goods of computer software is supplied to public funded research institutions subject to fulfilment of conditions prescribed in column 4 of the said notification.

The **main issue** involved was whether the license being provided will be classified as supply of service **under SAC 997331** in terms of entry 5(c) of schedule II of the CGST Act, 2017 which states "temporary transfer or permitting the use or enjoyment of any intellectual property right" or will the same be classified as goods as per the notifications above.

It was held that the **software supplied is a pre-developed or predesigned software, made available through encryption keys** and hence, is classifiable as Goods as per **FAQs in terms of Schedule II**. Further, the same supplied by the applicant cannot be used without the aid of computer and thus, the goods supplied will fall within the ambit of computer software. Moreover, as per the explanatory notes to Scheme of classification of services, **SAC 997331 excludes Licensing services for the right to use computer software and database.**

Hence, the supply made is **supply of goods for the purpose of above notifications and subject to GST @ 5%.**