

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

Advance Ruling No. KAR ADRG 47/2022

Date : 12-12-2022

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes

... Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect Taxes ... Member (Central)

1.	Name and address of the applicant	M/s. CAPFRONT TECHNOLOGIES PVT. LTD., # 1, 2 nd Floor, Old Airport Services Road, Domlur Layout, Bengaluru - 560 071.
2.	GSTIN or User ID	29AAHCC8732D1ZK
3.	Date of filing of Form GST ARA-01	11-08-2022
4.	Represented by	Sri. Bhavesh Jhabak, Manager & Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru. (Range-AED2)
6.	Jurisdictional Authority - State	ACCT, LGSTO-45 A, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and its reference	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. DC2907220216391 dated 20.07.2022.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Capfront Technologies Private Limited (herein after referred to as 'Applicant'), # 1, 2nd Floor, Old Airport Services Road, Domlur Layout, Bengaluru - 560 071, having GSTIN 29AAHCC8732D1ZK, 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.



Capfront Technologies

2. The applicant stated that they are a private limited company, a start-up based in Bengaluru, incorporated on 22-11-2018, with the focus on providing data analytics, digital marketing services & product development; registered under CGST/KGST Act 2017. The applicant own a mobile application, developed and owned by them, called as "LoanFront", which is a Fintech product and is used as a digital platform to facilitate lending of short term personal loans; they intend to transfer the said mobile application software to their wholly owned subsidiary M/s Vaibhav Vyapaar Private Limited (VVPL).

3. In view of the above, the applicant has sought advance ruling in respect of the following question:

a. Whether the GST would be applicable on the aforesaid transfer of mobile application software?

4. **ADMISSIBILITY OF THE APPLICATION :** The applicant filed the instant application seeking advance ruling on the issue of determination of the liability to pay tax on the transfer of part of their business i.e. "LoanFront" app, a mobile software. Thus the application is admissible under Section 97(2)(e) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant submitted that they intend to sell & assign the rights, obligations, source codes, development specifications along with the end user manuals and instructions to their wholly owned subsidiary M/s VVPL. The business activity of the applicant, after the said transfer, would be that of lead generator and continue to earn its revenue through outsourcing agreements, any technical support with regard to the software and similar others. M/s VVPL would use the mobile application / intend to carry on the business in the same manner as that of the applicant.

6. **Applicant's Interpretation of Law:** The applicant submits that 'going concern' as per the accounting standards means 'as continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of Liquidation or of curtailing materially the scale of operations'. Further, a business is said to be transferred as a going concern, if

- a) The assets must be sold as a part of 'business' as a going concern*
- b) The purchaser intends to use the assets to carry on the same kind of business as the seller*
- c) Where only part of business is sold, it must be capable of separate operation*
- d) They must not be series of immediately consecutive transfer*



The applicant, basis above, contends that the transfer of mobile application by them to M/s VVPL falls under the ambit of transfer mentioned at Sl.No. 2 in Notification 12/2017-GST (Rate) dated 28.06.2017 and thus the said transfer is exempted as *"Services by way of transfer as a going concern, as a whole or an independent part thereof"* in terms of Notification supra.

PERSONAL HEARING PROCEEDINGS

7. Sri Bhavesh Jhabak, Manager & Authorised Representative of the applicant appeared for personal hearing proceedings held on 18.08.2022, reiterated the facts narrated in their application and sought additional hearing. An additional personal hearing opportunity was provided on 29.09.2022, but the applicant sought adjournment. Hence one more opportunity of personal hearing was given on 10.11.2022 and Sri. Gowrinath, Promotor and Founder of the company appeared and submitted their oral arguments.

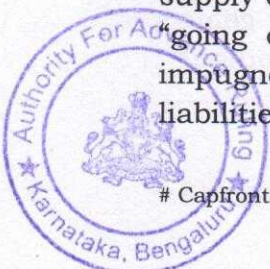
FINDINGS & DISCUSSION

8. 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.

9. 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.

10. The applicant is a private limited company and are into the business of data analytics services, digital marketing services and also product development. They own a mobile application "LoanFront", which is a Fintech Product and is used as a digital platform to facilitate lending of short term personal loans. The applicant intend to sell & assign the rights, obligations, source codes, development specifications along with the end user manuals and instructions to VVPL, who would use the said application and carry on the business in the same manner.

11. The applicant submitted that they intend to sell an independent part of their business (LoanFront App) to VVPL along with assets & liabilities and contends that **transfer of business as a whole or independent part thereof** amounts to supply of service; the aforesaid independent part of their business qualifies to be a *"going concern"* as the same would be continued in the hands of VVPL; the impugned business is intended to be transferred along with all the assets & liabilities and hence their activity qualifies to be a service by way of transfer of a



going concern, as a whole or independent part thereof and thus is exempted in terms of entry number 2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

12. In view of the above, the issue before us to decide is whether the impugned transfer of part of the applicant's business related to "LoanFront" App qualifies to be a service by way of transfer of going concern and thereby exempted or not in terms of Notification 12/2017 supra. The phrase 'going concern' is not defined under the CGST / KGST Act 2017. Going concern is an accounting term referring to a business entity which will continue running its operations in the foreseeable future and will not be liquidated or forced to discontinue operations for any reason.

13. The Assistant Commissioner of Commercial Taxes, LGSTO-46, Bengaluru-38, vide their letter No.ACCT/LGSTO46/Others/T.No.496/2022-23, received in this office on 24.08.2022, forwarded the copy of Business/Asset transfer agreement entered by VVPL(the buyer) and the applicant (the seller). The relevant features of the agreement are as under:

13.1 The seller, engaged in the business of providing various services to the financial institutions such as Banks & NBFCs, has decided to sell its business(defined in the agreement) to the buyer (a NBFC registered with RBI) on a slump sale basis. Clause 1.1(c) read with Annexure I to the agreement defines the "Assests" to mean the mobile application called "LoanFront" which includes all the related software developed for its functionality such as Domain name, LMS software, Backend API, Websites, Analytical tools and Dashboards etc., and Business Intelligence / IP related to LoanFront application. Further clause 1.1(k) defines the liabilities to include the Gratuity of the Employees of Rs.6,90,726/-.

13.2 Further clause 2 of the agreement deals with the transfer of the business and clause 2.2 defines Business and its components that are intended to be transferred, which includes (i) Assets, (ii) Employees, (iii) Liabilities, (iv) Intellectual Property and (v) any other rights that the seller may have against third parties with respect to the business.

13.3 In view of the above, the statement of facts conveys that the transfer of business pertains to "LoanFront" app sought to be sold is a fully functional part of the business and the transaction contemplates the transfer of the entire aforesaid business to a new person(VVPL), who would not only enjoy a right over the assets but shall also take over the liabilities. It thus postulates that there will be a continuity of business, as the said part of business is said to be functional and is decided to be transferred as a whole to a new owner, and thus amounts to transfer of a going concern, of the said independent part of the business..

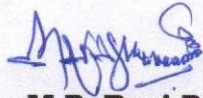
14. Further vide Sl.No 2 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, the said activity amounting to 'Services by way of transfer of a going concern, as a whole or an independent part thereof' attracts 'Nil' rate of tax without any conditions.



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

R U L I N G

The transfer of independent part of business pertaining to "LoanFront" app, a mobile software, qualifies to be a transfer of going concern, and the said activity amounts to "Service by way of transfer of going concern as an independent part" and thus is exempted from GST in terms of Sl.no.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.



(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority
Place : Bengaluru, 560 009



(Kiran Reddy T)

Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 12-12-2022

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 East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-45 A, Bengaluru.
5. Office Folder.

