

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

Advance Ruling No. KAR ADRG 16 / 2018

Dated : 27th July 2018

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax,
. . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of
Commercial Taxes
. . . . Member (State Tax)

1.	Name and address of the applicant	M/s Rajarathnam's Jewels, B-12, Devatha Plaza, Residency Road, Bengaluru 560025
2.	GSTIN or User ID	29AABFR5632E1ZA
3.	Date of filing of Form GST ARA-01	24.01.2018
4.	Represented by	Sri Gopal Mundra, Chartered Accountant
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Commissionerate- Bengaluru East, East Division-1, DED1 Range, Bengaluru
6.	Jurisdictional Authority – State	NA
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CPIN 18012900356275 dated 22.01.2018 by NEFT 2. Rs.5,000-00 under KGST Act vide CPIN 18022900031001 dated 06.02.2018 by NEFT 3. Rs.5,000-00 under IGST Act CPIN 18012900356275 dated 22.01.2018 by NEFT

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

1. M/s Rajarathnam's Jewels, (called as the 'Applicant' hereinafter), having its registered office at B-12, Devatha Plaza, Residency Road, Bengaluru 560025, having GSTIN number 29AABFR5632E1ZA, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act, IGST Act and the KGST Act.

2. The Applicant is a partnership firm engaged in the retail business of gold and is registered under the Goods and Services Act, 2017. He is desirous of entering into a derivative contract in diamonds through Indian Commodity Exchange Limited ('ICEX' or the 'Exchange') which is a recognized Commodity Derivatives Exchange regulated by SEBI to provide a nation wide online trading platform in commodity derivatives. ICEX has obtained a registration with Securities and Exchange Board of India (SEBI) vide Registration No.33.

The applicant has sought advance ruling in respect of the following question:

- a) Whether mere deposit of diamond with safe vaults acknowledged by Electronic Vault Receipts (EVR) would be treated as supply for the purpose of levy of GST?
- b) Whether conversion of EVR (representing receipt for diamonds deposited) into e-Units (securities) would be treated as supply liable to GST?
- c) Whether e-Units would be treated as securities and thereby transaction in e-Units would remain out of scope of the levy under GST?
- d) Whether the derivative contracts in e-Unit and settlement thereof would be treated as transaction in securities and thereby would remain out of scope of the levy under GST?
- e) Whether conversion of e-Units into diamonds would be treated as supply liable to GST?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that he is desirous of entering into a derivative contract in diamonds through ICEX which is a recognized Commodity Derivative Exchange regulated by SEBI to provide a nation-wide online trading platform in commodity derivatives and ICEX has obtained a registration with SEBI.
- b. Securities Contracts (Regulation) Act, 1956 (SCRA) has been enacted by the Parliament for the purpose of regulation of the business of transaction in securities. The definition of the securities under SCRA also includes transaction in commodity derivative of the notified commodities. In terms of the Notification dated 27.09.2016 bearing F.No.17/2/2016-CD (Notification dated 27.09.2016) issued by Ministry of Finance, Government of India, "diamond" amongst other commodities has been notified for the purpose of allowing trading in derivative contract through a recognized exchange.
- c. Accordingly, ICEX has recently launched the diamond derivative contracts wherein settlement of the open position is done by delivery of electronic units (e-units, where the diamond is an underlying commodity) and to provide a screen based online trading platform to its members to enable execution of trading in diamond derivative contracts and settlement thereof. In this regard, SEBI has vide its letter dated August 1, 2017, allowed ICEX to launch diamond derivative contracts in diamonds upto contracts expiring in March 2019.

- d. Any person desirous of entering into a derivative contract in diamonds would need to follow the process prescribed by ICEX:
- i. Such person would need to register with the Exchange as a member by depositing a one-time membership fee and a nominal amount as annual subscription fee every year.
 - ii. Further, any person who is not registered as a member with ICEX can also enter into diamond derivative contracts on the online platform through a member who is registered with the Exchange;
 - iii. ICEX would take and/or recover an initial margin amount as deposit, sufficient to cover its potential exposure, from any member desirous of entering into a derivative contract (taking buy or sale position) using the online platform;
 - iv. The diamond derivative contracts are subject to market risk which depends upon the price volatility as influenced by the quantum of trade and the price discovery through market forces;
 - v. In case of excessive market volatility or circumstances where risk element is higher, an additional and/or special margin may also be recovered by ICEX from its member, as deposit;
 - vi. A derivative contract commences on 6th of every month and expires on 5th of third month;
 - vii. Before the expiry of the contract period, such person may square off its position (by taking an opposite position to the previous position, i.e. a sale position against a buy position and vice versa);
 - viii. In case of any open position at the expiry of the derivative contract, such person shall honour the obligation under the contract by giving or taking the delivery of e-Units;
 - ix. All deliveries in derivatives contract on expiry will be in electronic form only. For example, assuming that on expiry of the contract, member A has a sale position of 24 cents and members B and C have buy position of 16 and 8 cents respectively, then the member A can deliver 24 e-Units held by him against his sale position in the derivative contract. Buyers B and C, having buy position in derivative contract, will get delivery of 16 and 8 e-Units in their respective e-Accounts. There will be no physical delivery of diamond of 24 cents by the member A and similarly there will be no physical delivery of diamond of 16 and 8 cents to member B and C respectively;
 - x. If the seller defaults in delivering the agreed number of e-units on the appointed day, a penalty of 3% of the Delivery Order ('DOR') will be imposed on such defaulting seller. Out of such penalty, 1% will be credited to the buyer, 1.75% to

Settlement Guarantee Fund (SGF) and balance 0.25% will be retained by the Exchange as administrative expenses;

- xi. Further, every seller on the Exchange platform pays Commodity Transaction Tax (CTT) as payable under Income Tax Act, 1961;
 - xii. ICEX would also recover transaction fees, as applicable, for every transaction undertaken using the online platform;
 - xiii. A person having e-Unit in its e-Account can hold the same and retain the same as per its discretion in his e-Account without any restriction;
 - xiv. Even a person who does not possess any physical diamonds can trade in derivative contracts and square off the position before the expiry of the contract period.
- e. Further, in case a person has an open sale position at the expiry of a derivative contract and does not have sufficient e-units in his account to meet the obligation as regards the delivery of e-Units, such person would be required to obtain e-Units by converting physical diamonds into e-Units ("Conversion of diamonds into e-Units") by following the below mentioned procedure prescribed by ICEX:
- i. Such person shall approach IDGR, the accredited grading agency of Exchange, through Exchange and deposit the diamond stone, having requisite weight, with grading agency for grading/verification;
 - ii. If the diamond stone confirms to the quality parameters specified by the Exchange, grading agency will deliver the stone in blister proof packing with grading report printed on it to the Exchange accredited vault;
 - iii. This grading report will have a unique serial number, which will be inscribed on the stone;
 - iv. The grading report and diamond stone will be deposited with the Exchange accredited vault and an electronic vault receipt (EVR) for the same will be given to such person;
 - v. Such person would have to surrender electronic vault receipt to obtain e-Units;
 - vi. e-Units equivalent to the stone's caratage/ weight in cents will be credited in diamond owner's e-Account. For example if the stone is of 104 cents, such person will get a credit of 104 e-Units.
 - vii. Once the diamonds are converted into e-Units, these diamonds become part of the pool of diamonds maintained by the Exchange and the holder of e-Units would lose its right to obtain the same diamond stone which was deposited;

- viii. Further, until EVR is converted into e-Units, the holder of EVR would have the right to surrender EVR and get the same diamond back. In other words, EVR is just an acknowledgement towards the safe deposit of diamonds in safe vaults and the rental charges as applicable are payable for such safe deposit of diamond.
- f. The entire mechanism of the diamond derivative contracts is such that in case a person has an open buy position at the expiry of a derivative contract and thereby gets the delivery of e-Units in his account, such person can hold and retain e-Units in its e-account without any restriction or condition. Such person can also utilize the e-units for delivery against any open sale position under any subsequent diamond derivative contract. In case, the person is interested in taking physical delivery of diamond, against its e-Units (Conversion of e-Units into diamonds), such person can surrender such e-Units to the Exchange and get physical delivery by following the procedure given below:
- i. Such person should possess minimum 100 e-Units in his e-Account;
 - ii. Delivery of physical diamonds from the vault will be offered in specified lots/ denominations and at specified locations;
 - iii. The Exchange would update the available stones and its weight on the Exchange's official website on periodical basis;
 - iv. Delivery of physical diamond will be made available from ICEX's designated security vault at Surat, till new centres to offer physical delivery are set up;
 - v. Such person shall submit a letter, indicating its intention to obtain physical diamonds and containing requisite details, with the Exchange;
 - vi. On receipt of such letter, the Exchange will send Delivery Order (DO) to the Vault authorities directly. Based on the DO received, the Vault will hand over the requested stone(s) to such interested person or its representative;
 - vii. If on the date of conversion of e-Units into diamonds, such person has accumulated 103 e-Units in his e-Account, however, exchange inventory is carrying only two stones having 101 cents and 105 cents, the following options would be available with the unit holder:
 1. The person can take delivery of a stone having 101 cents and keep the remaining 2 units in his e-Account; or
 2. The person needs to wait and acquire additional 2 units to take delivery of 105 cents stone.
- g. The applicant states that he is not registered as a member with ICEX, but desires to enter into diamond derivative contracts on the online platform through a member who is registered with the exchange.

4. The applicant also submits that Section 9 of the CGST Act inter alia provides that CGST would be leviable on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the Act and at such rates, as may be notified by the Government. Similarly, Section 5 of the Integrated Goods and Services Tax Act, 2017 inter alia provides that IGST would be leviable on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the CGST Act and at such rates, as may be notified by the Government.
5. Thus, as per the applicant, it is clear that taxable event under GST is 'supply of goods or services or both'. The term 'supply' has been defined under section 7 of the CGST Act as under:
Scope of Supply
- (1) For the purposes of this Act, the expression "supply" includes –
- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - (b) Import of services for a consideration whether or not in the course or furtherance of business;
 - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II."
6. The applicant states that from a perusal of the aforesaid extracted portion of Section 7, a position can be taken that the following conditions should be cumulatively fulfilled for levy of GST:
- a. There should be a supply of goods or services or both in the given form such as sale, transfer, barter, exchange, licence, rental, lease or disposal or a form similar thereto;
 - b. Supply should be made or agreed to be made for a consideration, except the activities specified in Schedule I to the GST Act;
 - c. Supply should be made in the course or furtherance of business, the only exception being import of services;
7. The term "goods" has been defined under Section 2(52) of the CGST Act as under :
- "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply."*

The term "services" has been defined under section 2(102) of the CGST Act as under:

"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged"

The term "goods" is defined to mean every kind of movable property, therefore, diamonds would constitute goods. The term "service" has been defined to mean everything other than goods. A conjoint reading of the definition of the term "goods" and "services" under CGST Act suggests that "securities" are specifically excluded from the definition of the term "goods" as well as "services". Further, section 2(101) of the CGST act adopts the definition of the term "securities" from SCRA.

8. The term "securities" has been defined under section 2(h) of the SCRA as under:

"securities" include

(i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instruments issued to the investors under any mutual fund scheme;

Explanation.- For removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938);

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(ii) Government securities;

(ia) such other instruments as may be declared by the Central Government to be securities; and

Rights or interests in securities;”

The term “derivative” is defined under section 2(ac) of the SCRA as under:

“derivative” includes

- (A) A security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
- (B) A contract which derives its value from the prices, or index of prices, of underlying securities;
- (C) Commodity derivatives; and
- (D) Such other instruments as may be declared by the Central Government to be derivatives;”

The term “commodity derivative” has been defined under Section 2(bc) of the SCRA as under:

“commodity derivative” means a contract –

- (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready deliverable contract; or
- (ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac);

The term “ready deliverable contract” is defined under section 2(ea) of SCRA as under:

“(ea) “ready delivery contract” means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately, or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part:

- (I) by realization of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or
- (II) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price therefore is dispensed with, then such contract shall not be deemed to be a ready delivery contract;”

9. The applicant also has submitted that the term "consideration" has been defined under Section 2(31) of the CGST Act and the term "business" has been defined under Section 2(17) of the CGST Act. He opines that the term "business" is widely worded and therefore, the activities proposed to be undertaken on ICEX by the applicant would constitute business.
10. The applicant submits that in light of the above legal provisions, the implications under the GST on the specified transactions are as under:
- a. Levy of GST on mere deposit of diamond with Safe Vaults in return for Electronic Vault Receipts (EVR)
 - i. In this leg of the transaction, the person hands over the diamonds to the Safe Vault designated by the Exchange and is issued an EVR which is in nature of the acknowledgement of the deposit of the diamond by the Safe Vaults.
 - ii. The Safe Vaults holds the diamond in the capacity of a bailee and is under obligation to return the diamond upon furnishing the EVR by the depositor. Furthermore, the person has the right to obtain the same diamond stored at the vault at any point in time on production of the EVR.
 - iii. The person can then opt to surrender the EVR to the Exchange in return of e-Units to be allotted by the Exchange. Once, the EVR is surrendered in lieu of diamonds, the right to obtain the same diamond is lost. In other words, the ownership of diamond is transferred to gain the ownership of e-Units (which is in the nature of securities).
 - b. Levy of GST on conversion of EVR into e-Units
 - i. Under this arrangement, the person surrenders EVR (constructive ownership in diamonds) and receives e-Units (securities). Section 7 of the CGST Act inter alia suggests that GST would be leviable on supply of goods or services or both made or agreed to be made for a consideration.
 - ii. The term "consideration" is very wide to include all forms of consideration whether monetary or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person. The only exception to this is subsidy given by the Government. Thus e-Units credited against supply of diamonds at the time of conversion can be said to constitute "consideration" under Section 2(31) of the CGST Act towards the supply of diamond.
 - iii. Keeping in view the definition of the term "consideration", it can be said that the following conditions are fully satisfied at the time of conversion of diamonds into e-Units:
 - 1. The transaction involves supply of diamonds at the end of the person surrendering EVR.

2. Such supply is made against the receipt of e-Units which constitute consideration under section 2(31) of the CGST Act
 3. Supply of diamonds is made in the course or furtherance of business.
- iv. In view of the above, a position may be taken that conversion of EVR into e-Units would constitute supply of diamonds by such person to Exchange against the consideration in the form of e-Units and would be subject to GST at the applicable rate.
 - v. The applicant submits that once a person converts EVR (the constructive ownership of diamond) against the receipt of e-Units (securities), effectively there is supply of diamond against the consideration in form of e-Units.
 - vi. Any person holding e-Units has an option of either utilizing e-Units for delivery against any open sale position under any derivative contract in e-Units or surrender the e-Units and take physical delivery of diamonds. In both cases, there is a transfer of e-Units from one person to another. The question that requires examination is whether transfer of e-Unit by the transferor would be regarded as transaction in securities at its end and thereby out of scope of GST.
 - vii. The applicant submits that the transaction in securities does not amount to supply of goods or services or both and thereby out of GST net. In the instant case, he submits, that e-Unit constitutes securities on the following basis:
 1. Section 2(101) of CGST Act adopts the definition of the term "securities" from SCRA;
 2. The definition of the term "securities" as defined under Section 2(h) of the SCRA include "derivatives" within its ambit;
 3. The term "derivative" is defined under section 2(ac) of the SCRA to include commodity derivatives;
 4. The term "commodity derivative" has been defined under Section 2(bc) of the SCRA to mean a contract for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract;
 5. The Central Government has issued Notification dated 27.09.2016 bearing F.No. 17/2/2016-CD to notify the goods specified in the Schedule for the purposes of clause (bc) of Section 2 of the SCRA. Entry 57 of the said Notification dated 27.09.2016 covers diamonds;

6. The term "derivative" as defined under section 2(ac) of the SCRA also includes a contract which derives its value from the prices, or index of prices, of underlying securities;
 7. ICEX has obtained the requisite approvals from SEBI.
 8. Hence it is evident that e-Units are contracts that squarely fall under section 2(bc)(i) of the SCRA and consequently, would be treated as commodity derivatives and ultimately as "securities" under section 2(h) of the SCRA.
- viii. Thus, according to the applicant, the e-Units being securities, the transfer of e-Units by a transferor does not involve supply of goods or services or both under section 7 of the CGST Act, at the end of the transferor.
- c. Levy of GST on diamond derivative contract in e-Units and settlement thereof
- i. The applicant submits that derivative contracts in e-Units are typically futures contracts in e-Units and also attract commodity transaction tax payable under the Income Tax Act, 1961. As e-Units are in the nature of securities, a derivative contract in e-Units on the Exchange Platform would also be treated as transaction in securities.
 - ii. In the instant case, the genesis of the whole transactional scheme is the approval issued by SEBI in terms of this approval issued under Section 9 read with Section 18A of the SCRA. Further, being in nature of the commodity derivative, the transaction attracts Commodity Transaction Tax (CTT) as payable under Income Tax Act, 1961.
 - iii. Thus, the applicant submits, being a transaction in securities, the arrangement of derivative contracts in e-Units does not involve supply of goods or services or both and it can be said that such arrangements do not constitute "supply" under section 7 of the CGST Act.
- d. Levy of GST on conversion of e-Units into diamonds
- i. Under this arrangement, a holder of e-Units surrenders such e-Units in exchange for the delivery of actual diamonds. Upon exercising such option, the Exchange would generate a Delivery Order, based on which the vault will hand over the stones to the designated authorised representative.
 - ii. Thus, the transaction essentially involves "supply" of diamonds (goods) by the Exchange against the surrender of securities;

iii. Keeping in view of the aforesaid definitions, it is clear that the following conditions are fully satisfied at the time of conversion of e-Units into diamonds:

1. The transaction involves supply of diamonds at the end of Exchange
2. Such supply is made against e-Units which constitute consideration under section 2(31) of the CGST Act
3. Supply of diamonds is made in the course or furtherance of business.

iv. In view of the above, a position may be taken that even reconversion of e-Units into diamonds would involve the "supply" of diamonds in exchange to such person against the consideration in the form of e-Units and would be subject to GST at the applicable rate.

11. The applicant submits that in view of the above, a ruling is sought whether the applicant has rightly concluded the following legal positions:

- a. Mere deposit of diamond with safe vaults in return for EVR would not be treated as supply for the purpose of levy of GST
- b. Conversion of EVR into e-Units would be treated as supply of diamond liable to GST at the end of person surrendering the EVR
- c. E-Units would be treated as securities and thereby transactions in e-Units would remain out of the scope of the levy under GST
- d. The Contracts of diamond derivative and settlement thereof would be treated as transaction in securities and thereby would remain out of the scope of the levy under GST
- e. Conversion of e-Units into diamonds would be treated as supply of diamonds liable to GST at the end of Exchange.

12. FINDINGS & DISCUSSION:

- a. The submissions of the applicant is verified and found the following:
 - i. The applicant proposes to convert diamond to e-Units by depositing them to the safe vault, obtaining an EVR and surrendering the EVR to obtain e-Units. In this transaction, the diamonds are handed over to the Safe Vault and obtains the receipt of such deposit. As per the submissions made by the applicant, it is seen that at this stage, the applicant can surrender the EVR and obtain the same diamond back which were deposited in the Safe Vault. Hence there is only a transfer of possession of diamonds and the Safe Vault holds the diamonds as a bailee of the depositor, i.e the applicant and is under the obligation to return the same back to the depositor on submitting the EVR. Further, there is no consideration involved in this transaction and hence this

transaction does not amount to supply of goods, i.e. diamonds.

- ii. The applicant, who is in possession of the EVR, would now propose to convert the EVRs, which represent the diamonds in the possession of the bailee, to e-Units. The EVRs being documents to the title of goods represent the diamonds in possession of the bailee and any transfer of EVRs amounts to transfer of the title to the goods, i.e. diamonds. Hence there is a supply of diamonds. The consideration need not be in the form of cash, but in the form of securities. The submission of the applicant that he effectively loses the title to the same goods being diamonds once he surrenders the EVRs pertaining to those diamonds deposited points to the fact there is transfer of title of diamonds to the person who is receiving it and converting the same to e-Units. Hence this transaction amounts to supply of diamonds as per Section 7 of the Central Goods and Services Act and is liable to tax as per Notification No. 1/2017 –Central Tax (Rate) dated 27.06.2017.
- iii. The transactions of e-Units are in the form of derivatives as they are done on an online – M/s ICEX is approved by SEBI to act as a commodity exchange and it has been permitted by launch Diamond futures. It has also received approval from SEBI permitting the exchange to recommence live trading operations and it has all the necessary infrastructure to handle deposits, grading and sealing, vaulting and deliveries of diamonds as part of its preparation to launch the diamond contracts. According to the applicant, ICEX is a trading company dealing in commodity futures and is deemed recognized stock exchange under SCRA, 1956 in terms of Section 131(B) of Finance Act, 2015, pursuant to the Central Government Notification dated August 28, 2015 providing a nation-wide online trading platform in commodity derivatives. The ICEX is converting the EVR into e-Units, which are in the nature of securities, as admitted by the applicant.
- iv. Section 2(101) of the Central Goods and Services Tax Act, 2017 defines “securities” and they shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956, (SCRA) the term securities include “derivatives” and as per Section 2(ac) of the SCRA, the term derivatives includes commodity derivatives.
- v. Section 2(bc) of the SCRA defines the commodity derivatives meaning a contract for delivery of goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or a contract for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board, but does not include

securities as referred to in sub-clauses (A) or (B) of clause (ac). Notification No, S.O.3068(E) F No. 17/2/2016-CD dated 27.09.2016 notified diamonds (entry no. 57) as goods specified for the purposes of clause (bc) of section 2 of the Securities Contracts (Regulation) Act, 1956. Hence any e-Units which have diamonds as underlying goods shall have to be treated as securities as per the definition of "securities" under the clause (101) of section 2 of the Central Goods and Services Act, 2017 and consequently, any transaction in securities are not covered under the GST Acts for taxation as they are neither covered under the definition of goods or services. Hence transactions of e-units are not taxable under Goods and Services Tax Acts.

- vi. The applicant proposes to surrender the documents of title to the diamonds (goods) in the form of EVR to obtain e-Units and this involves the loss of right of claim of the same diamonds which he has kept in vault and hence there is a transfer of title to the diamonds. What is obtained by surrender of e-Units at the time of exchange of e-Units to diamonds is similar diamonds and not the same diamonds. Hence, there is a supply of diamonds. Section 7(1) of the Central Goods and Services Tax Act, 2017 covers the supply of goods in the form of exchange under the scope of supply and the consideration received by the applicant is in the form of e-Units. The term consideration as per section 2(31) of the CGST Act is wide enough to consider any payment made or to be made and it is immaterial whether such payment is made in the form of money or otherwise. Hence this exchange of diamonds to e-Units constitute a supply under section 7(1) of the CGST Act and the applicant is liable to tax on the value of such transaction.
- vii. Similarly, when the e-Units are surrendered to obtain the diamonds, there is a supply of diamonds by the Exchange to the applicant for a consideration in the form of e-Units surrendered and this constitute a supply under the provisions of section 7(1) of the CGST Act.

13. In view of the foregoing, we rule as follows

R U L I N G

1. The mere deposit of diamond with safe vaults acknowledged by Electronic Vault Receipts (EVR) does not constitute of supply of diamonds for the purpose of levy of GST
2. The conversion of Electronic Vault Receipts representing the diamonds held in the Vaults to e-Units would constitute a supply of diamonds liable to tax under the Goods and Service Tax Act.
3. The e-Units are securities under the clause (101) of section 2 of the Central Goods and Services Tax Act and hence transactions in e-Units would remain out of the scope of levy of tax under Goods and Services Tax Act.

4. The derivative contracts in e-Units and settlement thereof would be treated as transactions in securities in case it involves only e-Units without any involvement of physical diamonds and thereby would remain out of the scope of levy under GST.
5. The conversion of e-Units into diamonds would constitute a supply of diamonds liable to tax under the Goods and Services Tax Act.


(Harish Dharnia)
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009
Place : Bengaluru,
Date : 27.07.2018


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

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore East Commissionerate,
Bengaluru.

The Asst. Commissioner, LVO - , Bengaluru.

Office Folder.

