AUTHORITY FOR ADVANCE RULING, TAMIL NADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING,
NO.1. GREAMS ROAD, CHENNAI - 600 006.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER SECTION 98(4) OF THE TNGST ACT, 2017.

Members present:

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.

Advance Ruling No. 24 /AAR/2023 Dated: 20.06.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAHCS3154M1Z6
Legal Name of Applicant		AVEVA Software Private Limited
Registered Address/Address provided while obtaining user id		Smart work coworking spaces Pvt Ltd, Block 3, A3 and A4, North Phase, Guindy Industrial Estate, Guindy, Chennai, Tamilnadu-600032
Details of Application		GST ARA- 01 Application Sl.No. 09/2022/ARA dated: 31.05.2022
Concerned Officer		Centre: Chennai South Commissionerate State: Ekkattuthangal Circle, Chennai South Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Sub-licensing of software
B	Description (in Brief)	The applicant is a subsidiary of AVEVA Group Plc, having headquarters at UK. AVEVA Plc is a global ultimate parent company of the applicant. The Applicant has entered into an arrangement with various IP owners of AVEVA group for promotion, distribution and sub-licensing of software products to the end users within the identified territories.
Issue/s on which advance ruling required		1.Determination of time and value of supply of goods or services or both 2. Determination of liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		1.Whether GST is applicable on sub-licensing of the software by the applicant to end-users in India? If yes, then what shall be the value of supply? 2. Whether GST is applicable on the 'Market Support fees' received by the applicant from Central Hub? 3. Whether the taxable value for the operating fees paid to Central Hub by the applicant pursuant to the said arrangement shall be determined as per Rule 28 of the Tax Valuation Rules prescribed in CGST Rules 2017?

M/s. AVEVA Software Private Limited, Smart work coworking spaces Pvt Ltd, Block 3, A3 and A4, North Phase, Guindy Industrial Estate, Guindy, Chennai, Tamilnadu-600032 (hereinafter called the Applicant) are registered under GST with GSTIN33AAHCS3154M1Z6. The applicant has sought Advance Ruling on the following questions:

1.Whether GST is applicable on sub-licensing of the software by the applicant to end-users in India? If yes, then what shall be the value of supply?
2. Whether GST is applicable on the 'Market Support fees' received by the applicant from Central Hub?
3. Whether the taxable value for the operating fees paid to Central Hub by the applicant pursuant to the said arrangement shall be determined as per Rule 28 of the Tax Valuation Rules prescribed in CGST Rules 2017?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they are a subsidiary of AVEVA Plc, which is a multi-national company, having its headquarters at United Kingdom. AVEVA Plc is a global ultimate parent company of the Applicant and is engaged in providing engineering design and information management solutions services in addition to specialized technology consulting services to its clients in the Oil & Gas, Power, Marine, Pulp & Paper, Chemical and Mining industries. The Applicant has stated that they are having office in Chennai, Tamil Nadu. AVEVA Plc and the applicant are the members of the AVEVA Group. Further, Central Hub being located outside India is the IP owner within the AVEVA Group which manages and licenses the AVEVA software products. Central Hub grants licenses of software products to other entities within the AVEVA Group, to enable them to further sub-license it to the End-users on their own account. The Applicant and Central Hub has entered into an arrangement by way of an Operating Agreement(hereinafter referred to as OA), where the Applicant being a distributor undertakes sub-licensing, promotion and marketing of the software products to the End-users within the territory namely, India, Sri Lanka, Bangladesh, Nepal and Maldives (hereinafter referred to as 'Territory'). In pursuant to the said arrangement, Central Hub has appointed the

Applicant as a non-exclusive distributor of software products by granting a non-exclusive right to sub-license the software products. Further, the applicant provides implementation services relating to sub-licensing of software to the End-users, upon specific request. It also promotes and markets the software products to the End-users. The Applicant provides all the services in its own name and for its own account within the territory. The Applicant acts as an authorized distributor of Central Hub while sub-licensing the software products. It has been agreed between the two parties that the Applicant does not represent itself as an agent of the Central Hub for distribution of software products, provision of the services or for any other purpose. Therefore, the applicant has stated that there is no principal and agent in terms of the said arrangement. The Central Hub grants the rights to the Applicant, to further sub-license the software products within the identified territories, the Applicant as and when required enters into a valid and binding contractual agreement with the End-users for sub-licensing the software, in its own name. Upon receipt of executed agreement, the Applicant delivers a copy of the relevant product to the-End-.users in object code form only, along with the copy of product documentation. In other words, the Applicant sub-licenses the software by transferring the right to use, to the End-user. For the said sub-licensing, the Applicant receives the sub-licensing fees from the End-users. In consideration the rights granted by Central Hub to the Applicant to sub-license software products, an operating fee is payable on quarterly basis by the latter to the former after retaining the cost and guaranteed margin from the value of sales. Further, in case the, Applicant is unable to retain the cost and guaranteed margin as agreed under the present arrangement, the Central Hub has agreed to make a payment to ensure that the Applicant retains the guaranteed margin. Such an act of agreeing to make the payment for guaranteed margin retention is referred as market support provided by the Central Hub to the Applicant.

2.2 On interpretation of law, the applicant has submitted the following facts:

In respect of the question No.1 the applicant's interpretation is as below:

- The transaction is subject to GST as it qualifies as a "Supply" in terms of Section 7 of CGST Act and the GST is leviable in terms of Section 9 of the Act. Section 7 includes supply of goods or services or both. In terms of definition of goods and services under section 2(52) and 2(53) it is seen that a activity shall qualify as supply of goods in case where any movable property is involved. In the instant case there is no movable property involved. The

definition of services covers anything which does not qualify as goods. Hence, in the instant case the activity of sub-licensing software products shall qualify as "Service".

- As per clause 5(f) of Schedule II of the CGST Act, transfer of right to use shall be treated as "Supply of Service". In the present case, the applicant transfers the right to use software products to the end users by providing object code, which is within the ambit of Clause 5(f) of Schedule II of the Act. Hence, in terms of Section 7(1A) of the Act, the sub-licensing of software products to end user is "Supply of service".

- The Pre-requisite of definition of supply is "Consideration". In the instant case the applicant receives a fee for sub-licensing software products to end – users which shall qualify as "Consideration", Since the same is received in lieu of the services provided by applicant.

- In respect of the value of supply, as defined under section 15 of the Act, as the applicant and end users are not related persons, the amount charged by applicant for sub-licensing of software products shall be the taxable value.

Q.No.2 : Applicability of GST on the "Market Support Fee" received by applicant from Central Hub:

- The Market Support fee is to compensate the applicant, where the guaranteed profit margin is not being maintained. The activity of tolerating an act by not being able to maintain the guaranteed margin upon distribution, shall be considered as 'supply of service' as it is within the ambit of clause 5(e) of Schedule II of the Act.

- As the applicant and recipient are not located in the same stated the applicable GST is in terms of Section 5 of IGST Act, 2017. However, there is an exception in case where the supply of services qualifies as Zero rated Service in terms of Section 16 of IGST Act. Zero rated

Sl.No	Condition	Present case
1	the supplier of service is located in India;	As per Section 2(15) of IGST Act, where a supply has been made from a place where the person has obtained registration, the 'location of the supplier of services' shall be such place of business. In the instant case, the

		Applicant is providing services from Chennai and have obtained GST registration. Therefore, the location of the supplier of service shall be Chennai i.e India
2	the recipient of service is located outside India;	As per Section 2(14) of 1GST Act, the "location of the recipient of services" shall be the respective place of business or fixed establishment, if a supply has been received at a registered place of business or registered fixed establishment. However, in other cases, the usual place of residence of the service recipient shall be the location of the service recipient. In the instant case, the Central Hub is not registered in India and therefore, the location of recipient of service is outside India.
3	The place of supply is outside India	With reference to the place of provision of services, as the said service is not covered in sub'-section (3) to (13) of Section 13 of the IGST Act, the general rule shall apply and therefore, the place of supply shall be the location of the recipient of service viz outside India.
4	the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian Rupees wherever permitted by the Reserve bank of India	The applicant is receiving the 'Market Support fee' in the convertible foreign exchange
5	The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 in Section 8	Applicant and central hub are separate legal entities.

- From the above facts, it is seen that the said activity shall qualify as 'export of service' and as the applicant undertakes the said supply of service as a principal supplier and it is not facilitating a supply of service between central hub and any third party. Hence, the applicant is not covered under definition of 'intermediary' as defined under section 2(13) of the IGST Act.

- The applicant has placed reliance on the judgement on CESTAT Mumbai in the case of Commissioner of Service Tax-VII Mumbai V/s M/s Abbott Healthcare Pvt Ltd [209(12) TMI 232-CESTAT Mumbai] to substantiate the fact that they shall not qualify as an intermediary.

  Q.No:3: taxable value for the operating fees paid to Central Hub by the applicant pursuant to the said arrangement shall be determined as per Rule 28 of the Tax Valuation Rules prescribed in CGST Rules 2017

- The applicant has stated that since the central hub being supplier of service is providing distribution rights, the same shall qualify as import of service under Section 2(11) of the IGST Act.

- The conditions of a service to qualify as import of service and the present case scenario is evaluated below:

Sl.No	Condition	Present case
1	The supplier of service is outside India	The central hub is located outside India
2	The recipient of Service is located in India	As applicant is located in India, the condition is satisfied
3	The place of supply of service is within india	the place of supply of the said activity shall be determined by applting general rule since it is not covered in sub'-section (3) to (13) of Section 13 of the IGST Act, hence, the place of supply shall be location of recipient of service i.e India

- To determine the value of supply for the said activity the applicant claims that as per explanation to Section 15(5) of the CGST Act, the applicant and

central hub are related persons. Hence, value cannot be determined in terms of Section 15(1) of the CGST Act. The applicant has referred to Section 15(4) of the CGST Act read with Chapter IV of the CGST Rules 2017.

- Rule 28 of the CGST rules contains provisions for determining the value of supplies between related persons. In terms of second proviso to Rule 28, in case where the recipient is eligible for full Input tax credit, the value declared in invoice shall be 'open market value'
- The applicant has referred to the Appeal Ruling pronounced by Tamil Nadu AAAR in the case of M/s Specsmakers Opticians Pvt Ltd in TN/AAAR/09/20-19 (AR) dated 13.11.2019.
- In the instant case the Applicant is engaged in providing only taxable supplies. It does not undertake any exempt supplies. Therefore, there shall not be any proportionate reversal of ITC and the Applicant shall be eligible to avail full ITC. Hence, the valuation in such case shall be determined as per second proviso to Rule 28 of CGST Rules. Hence, the Applicant has submitted that it shall be eligible for full ITC of the tax discharged under RCM on payment of operating fees. to Central Hub. Therefore, value of supply in the said case shall be the value invoiced by Central Hub.

3.1 The first personal hearing in this regard with the applicant consent was held on 19.04.2022. The Authorised Representatives (AR) Shri. Thirumalai, Advocate and Shri Sagar Shah, Senior Manager, Deloitte Haskins & Sells, LLP appeared for the hearing and reiterated the submissions made. They submitted that the software is supplied by electronic mode which is accessed by Internet using source code by the end user. The CGST Member asked the details of license fee components and pricing mechanism for which the AR submitted that the model is proposed and not yet started. However, they assured to provide the construction of price mechanism. They were asked to submit the details of fee/margin etc. received from the central hub and activities undertaken for the central hub along with the accounting for the same; write up on justification to claim valuation as per CGST Rule 28.

3.2 The applicant vide their letter dated 16.05.2022 submitted the following clarification for the query raised by the Member regarding determination of price/fee for sub-licensing of the software products to end-users.

- In pursuant to the operating agreement with the central hub, the applicant has the liberty to determine the final price at which it can sub-license the

product to end-user. The price /fees is not influenced by the Central Hub The applicant will determine the price independently considering several business and economic factors such as:

i. Direct and indirect costs incurred/envisaged to be incurred by the applicant
ii. Demand of the product
iii. Price range of competitive products available in the market (if any)
iv. Economic factors such as inflation, deflation etc.
v. Government and legal regulations

3.3 Further vide their letter dated 20.05.2022, they submitted (received on 30.05.2022) submitted the following documents:

- Operating agreement between AVEVA SOLUTIONS LIMITED and AVEVA SOFTWARE PRIVATE LIMITED

3.4. The applicant was sent a mail on 14.07.2022 to submit sample contractual agreement with end users, copies of invoices issued for such supply. Further, on perusal of the Operating Agreement, Schedule 7, the para No.4.2 and 4.3 mentioned in the document was not available and hence they were asked to furnish the same. The applicant vide their letter dated 21.07.2022, submitted the End user Licence Agreement (EULA).They also stated that they have not issued any invoices pursuant to this arrangement yet. Further they also stated that para 4.2 and 4.3 in Schedule 7 in the Operating Agreement was inadvertently quoted and there is no such para.

3.5. A personal hearing was conducted on 10.01.2023, as there were changes in both Centre and State Advance Ruling Authorities. The applicant was represented by Shri. Thirumalai, Advocate, Shri Sagar Shah, Senior Manager, Deloitte Haskins & Sells, LLP, Mr. Kiran Gala, Manager(Taxation), M/s Aveva Software Pvt. Ltd., and Mr. Ashwath Baji, Assistant Commissioner, Guindy Division(Jurisdictional Officer). They reiterated their submissions already made. They relied on CBIC Circular No.178/10/2022-GST dated 03.08.2022 to claim that Market Support Fee proposed to be received as per the Composite Agreement with Central Hub will be in the nature of Compensation not attracting GST.

3.6. The Applicant vide their letter dated 13.02.2023, submitted the following pursuant to the personal hearing 10.01.2023:

1.Copy of the model agreement with end-users

2. Note on Market Support fees payable by Central Hub to Aveva.

Further they also submitted the following note:

That there are two risk factors in the contract viz as legal risk and financial risk. While the former lies Aveva, the latter lies with the Central Hub and they quoted certain clauses in their agreement to support their claim. In their note on Market Support Fees received by them from Central Hub, they placed reliance on CBIC Circular No.178/10/2022-GST dated 03.08.2022 to claim that Market Support Fee proposed to be received as per the Composite Agreement with Central Hub will be in the nature of Compensation not attracting GST.

4.1 The Centre Jurisdictional Authority, Chennai South Commissionerate, who has administrative control over the applicant was addressed vide this office letter dated 16.02.2022 requiring to furnish comments on the issue raised by the applicant and report whether any proceedings are pending in respect of the applicant. The said authority vide their letter dated 27.09.2022 submitted that there are no proceedings initiated/pending before the Department in respect of the rulings sought by the Applicant. Further to this, the Jurisdictional Authority vide their letter dated 20.02.2023 submitted the following comments in the respect of the questions raised by the Applicant:

- Regarding question 1, GST applicable on the sub-licensing of the software by the Applicant to the End-users in India and also in places other than India, which are stated in their agreement; Also all the set of services performed by the Applicant as stated in the agreement are subject to GST.
- Regarding Question 2, the Market support fees is subject to GST; Apart from the Market Support fees, Market Support Service fees, 'Services Fees', which are mentioned in the agreement are also subject to GST.
- Regarding their claim in question No.2, that their activity would amount to 'Export of Services', as per their agreement, they are not to be classified as 'intermediary' in terms of section 2(13) of the IGST Act, 2017, would be applicable only with regard to sub-licensing service and not to any other service/activity; As per the provisions of Para 3.5 of the Schedule 7 read with Schedule 3, 'Market Support Service Fee' is paid by the Central Hub to the Applicant for various type of services apart from sub-licensing service. Such services apart from sub-licensing, when offered by the Applicant to the Central Hub, the place of supply to be determined in terms of Section 13(3)(a) read with Section 13(8)(b). Further in as much as the 'toleration' is effected

by 'intermediary' in relation to business activity in taxable territory, it is not treatable as 'Export' and hence tax leviable.

- Regarding question 3, the taxable value for the operation fees payable to the Central Hub by the Applicant pursuant to said arrangement shall be determined as per Rule 28 of CGST Rules, 2017.

4.2 The State Jurisdictional Authority vide their letter dated 28.04.2022 has submitted that there are no pending proceedings in the applicant's case in their jurisdiction.

DISCUSSIONS AND FINDINGS:

5.1. We have carefully examined the statement of facts, supporting documents filed by the Applicant and the additional submissions made during the hearing. The applicant has sought Advance Ruling on the following questions:

- 1.Whether GST is applicable on sub-licensing of the software by the applicant to end-users in India? If yes, then what shall be the value of supply?
- 2. Whether GST is applicable on the 'Market Support fees' received by the applicant from Central Hub?
- 3. Whether the taxable value for the operating fees paid to Central Hub by the applicant pursuant to the said arrangement shall be determined as per Rule 28 of the Tax Valuation Rules prescribed in CGST Rules 2017?

5.2. We intend to take the questions one by one. The first question raised by the Applicant is

1.Whether GST is applicable on sub-licensing of the software by the applicant to end-users in India? If yes, then what shall be the value of supply?

5.2.1. The Applicant had submitted that they and Central Hub, who is outside India, has entered into an arrangement by way of an Operating Agreement (hereinafter referred to as OA), where the Applicant being a distributor undertakes sub-licensing, promotion and marketing of the software products to the End-users within the territory namely, India, Sri Lanka, Bangladesh, Nepal and Maldives (hereinafter referred to as 'Territory'). In pursuant to the said arrangement, Central Hub has appointed the Applicant as a non-exclusive distributor of software products by granting a non-exclusive right to sub-license the software products. Further, they stated that they provide implementation services relating to sub-licensing of software to the End-users,

upon specific request. It also promotes and markets the software products to the End-users; Also they provide all the services in its own name and for its own account within the territory and act as an authorized distributor of Central Hub while sub-licensing the software products.

5.2.2. It is imperative to peruse the Operational Agreement(OA) entered into between the Applicant and the Central Hub to decide whether the activity would amount to supply.

The relevant portions of the agreement is extracted and given below:

2.1. The Central Hub hereby appoints the Local Operating Entity:

2.1.1. as a non-exclusive distributor of the Products within the Territory to:

(b) grant sub-licences and distribute the products within the Territory on its own account including to resellers and other distributors.

The definition of 'Supply' as per Section 7(1) of CGST Act, the expression 'Supply' includes:

(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course of furtherance of business;

Based on the above definition, the clause 2.1.1(b) of the OA, denotes that the activity shall qualify as 'supply'. The next question which arises is whether the said activity would be supply of goods or services. The applicant submitted that they supply software license(s) to their customers in object code form only, along with copy of product documentation. The Applicant has claimed that the supply of software license would be 'supply of service', as it would be falling under clause 5(f) of Schedule II appended to CGST Act, i.e. 'transfer of the right to use any goods for any purpose(whether or not for a specified period) for cash, deferred payment or other valuable consideration'.

5.2.3. It can be seen that a software is an intellectual property having value. GST law does not recognize or make distinction between tangible and intangible property. Under GST law, the definition of "goods" makes it clear that all property whether tangible or intangible capable of being moved would fall within the definition of goods. Goods has following attributes: (a) utility (b) capable of being bought and sold (c) capable of being sold, transferred, delivered, stored and possessed. If a software whether customised or non-customised satisfies the attributes mentioned above, the same could be treated as "Goods". It is very essential for an article to be termed as "Goods", it is its marketability. It is

important to note that when a person purchases a software programme especially canned software implanted in some tangible medium,, he does not become owner of such software programme, but only a license holder, i.e., he cannot use of its own will.

5.2.4. Notification No. 1/2017-IT (Rate), read with Notification No. 1/2017-C.T. (Rate), stipulates that if pre-developed or pre designed software is supplied in any medium/storage (commonly) brought off-the-shelf) or made available through the use of encryption keys, the same is treated as a "supply of goods" classifiable under the Heading 8523 of the above notification and tax shall be charged at the rate of 18%.

5.2.5. CBIC vide its sectoral FAQs on Information Technology ('IT') and IT enabled services had said that *"in terms of Schedule II of the CGST Act, 'upgradation and implementation of information technology software or permitting the use or enjoyment of any intellectual property right are treated as services. But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523."*

5.2.6. Further, the Explanatory notes for the Scheme of Classification of Services. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services.

997331 Licensing services for the right to use computer software and databases.

This service code includes:

- *licensing services for the right to reproduce, distribute or incorporate computer programs, program descriptions and supporting materials for both systems and applications software. This applies to various levels of licensing rights such as rights to reproduce and distribute the software, rights to use software components for the creation of and inclusion in other software products;*
- *licensing services for the right to reproduce, distribute or incorporate databases (i.e. compilations of facts/information) in other databases or applications. This applies to various levels of licensing rights such as rights to reproduce and distribute the database, rights to use database components for the creation of and inclusion in other databases and applications.*

This service code does not include: -

packaged (non-customized) software/ database,
limited end-user licence as part of packaged software,
licensing services for the right to use database software, cf. 997331.

From the above, it is evident that the above heading excludes the services of limited end-user licence as part of packaged software. The Applicant's activity very much falls under the exclusion list.

5.2.7. Thus, the software supplied by the Applicant is pre-developed and pre-designed software and made available through the use of encryption keys and hence it satisfies all condition of the definition 'goods'. Further, it is observed that goods which are supplied by the applicant cannot be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable and hence the goods supplied qualifies to be "Computer Software" and more specifically cover under "Application Software". Supply of software license qualifies to be "Supply of Goods" on the grounds that as per the explanatory notes to the scheme of classification of services the SAC 997331 excludes the services of limited end-user licence as part of packaged software. Hence, the supply made by the Applicant is covered under 'Supply of goods' and GST shall be applicable on the same in terms of Section 9 of CGST Act, 2017.

5.2.8. Now, considering the next part in question 1, i.e. the value on which GST shall be applicable. It is pertinent to see Section 15 of CGST Act, which states the 'Value of Taxable supply' means:

" the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply".

In the instant case the applicant and end user are not related persons, since the applicant has not furnished any sample tax invoices for the actual transaction between them and the end user, the taxable value will be the actual transaction value which the applicant has charged the end user for sub licensing the software.

5.3. We take up the next question raised by the Applicant, which is

- 2. Whether GST is applicable on the 'Market Support fees' received by the applicant from Central Hub?

5.3.1. It is observed from the submissions of the Applicant that if the Applicant is unable to retain the cost and guaranteed margin as agreed under the arrangement, the Central Hub has agreed to make payment to ensure that the Applicant retains guaranteed margin. The Applicant has stated that the activity of tolerating an act by not being able to maintain the guaranteed margin upon distribution, shall be considered as a "supply of service" since it squarely falls within the ambit of clause 5(e) of Schedule II of CGST Act. However, it is the contention of the Applicant that, since the Applicant and Central Hub are not located in same state, GST on the same shall be applicable in terms of Section 5 of IGST ACT, further there is an exception to the same in case the supply qualifies as zero-rated in terms of Section 16 of the CGST Act.

5.3.2. On perusal of the Operating Agreement(OA) entered between Aveva Solutions Ltd., and Aveva Software Pvt. Ltd.(the Applicant, the following are noticed:

- As per Para 15, a Market Support Service Fee shall be payable by the Central Hub to the Local Operating Entity to the extent of any shortfall in profit margin guaranteed to the Local Operating Entity.
- As per the definitions and interpretations provided in the OA, Market Support Service fees has been defined as ' the amount payable by the Central Hub to the Local Operating Entity pursuant to clause 15.7, as determined and calculated in accordance with paragraph number 4 of schedule 7 annexed to the OA.
- As per Clause 15.1.4, a Market Support fees shall be payable by the Central Hub to the Local Operating Entity to the extent of any shortfall in profit margin guaranteed to the Local Operating Entity, as determined and calculated in accordance with paragraph number 4 of schedule 7.
- As per Clause no. 15.7, the Market Support Service fees shall be invoiced by the Local Operating Entity in the relevant currency which will be settled by the Central Hub in relevant currency or such other currency as may be agreed. Relevant currency as per the definition clause is the functional currency of the Local Operating Entity.
- As per the definitions provided in schedule 7, return on sales means 3% of revenues for such month. As per Clause paragraph number 3.4 of the schedule 7 of the said agreement, in any month where there is an operating loss or operating Profit is less the Local Operating Entity's return on sales for that period (plus the base fees referred to in Paragraph 4.2), then the difference between the operating loss or Operating Profit and the local

operating entities return on sales (plus such base fee) shall be payable as a market support fee by the Central Hub to the Local Operating Entity.

5.3.3. This calculation portion has been explained by the Applicant in vide additional submissions made on 18.04.2023, as detailed below;

Sl.No.	Particulars	Period 1 (in Rs.)	Period 2	Remarks
1	Value of supplies made by the Applicant	10,000	10,000	
2	Expenses incurred by the Applicant	9,800	6,000	
3	Base operating fees	1,000	NA	NA since the Applicant is able to retain guaranteed margin
4	Guaranteed Margin	300	300	
5	Additional operating fees payable by the Applicant	-	3700	Derived by (1-2-3-4)
5	Market support fees representing shortfall in profit margin guaranteed	1100		Derived by (2+3+4) - 1

5.3.4. From the above facts, it is clear that the Market Support fees is nothing but a compensation provided by the Central Hub to the Local Operating Entity, whenever the guaranteed profit margin is not earned by the Local Operating Entity, and therefore, it is nothing but an additional consideration received by the Applicant from the Central Hub for an agreed obligation as per the Operating Agreement. In this connection, the Applicant has claimed that, compensation received is not liable to GST, as clarified in Circular No.178/2022-GST dated 03.08.2022. But, as per Para No.7.2 of the said circular, it has been clarified that compensation paid by the Government to prior allottees for cancellation of coal blocks pursuant to the order of the Hon'ble Supreme Court of India was not taxable, as no promise or offer was

made by the prior allotees to the Government. Hence, it is not applicable to the issue of the Applicant.

5.3.5. 'Consideration' as defined in Section 2(31) of the CGST Act, 2017, specifies that;

(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, **whether by the recipient or by any other person** but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

5.3.6. Thus, consideration in relation to supply of goods and services includes payment received from any person other the recipient also for the inducement of, the supply of goods or services or both. Therefore, the amount received from the Central Hub in the form of Market support fees by the Local Operating Entity is an additional consideration charged towards the supply in this case which will form part of the value of supply as per the provisions of section 15 of the GST Act.

5.4. We take up the next question raised by the Applicant, which is

> 'Whether the taxable value for the operating fees paid to Central Hub by the applicant pursuant to the said arrangement shall be determined as per Rule 28 of the Tax Valuation Rules prescribed in CGST Rules 2017?'

5.4.1. The Applicant pay an amount as 'Operating fee' to the Central Hub in lieu of various rights, collectively may be referred to as 'distribution rights', granted by the Central Hub to the Applicant and in terms of Section 5(3) of the IGST Act, whether the same shall qualify as 'import of service'.

5.4.2. The relevant provisions of 'import of service' in IGST Act is as given below:

> *2(11) "import of services" means the supply of any service, where-*
> *(i) the supplier of service is located outside India;*
> *(ii) the recipient of service is located in India; and*

(iii) the place of supply of service is in India;

In the instant case the Central Hub being the supplier is located outside India, the recipient being the Applicant is located in India and the key factor to be decided is the place of supply.

As per Section 13 of the IGST Act: Place of supply of services where location of supplier or location of recipient is outside India.-

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services

In the current case, the said activity is not covered by Sub Section (3)to (13) of the IGST Act. Hence, the place of supply is the location of recipient of Service viz. India. The value for the said activity is determined as per Section 15 of the CGST Act 2017.

5.4.3. The conditions as envisaged in Section 2(11) of the IGST Act are satisfied, the distribution rights granted by the Central Hub to the Applicant shall qualify as 'import of services' in the hands of the Applicant. If the supplier of service is located in a non-taxable territory, the recipient of services located in the taxable territory is liable to pay GST under reverse charge as per Notification No.13/2017-CT(Rate) and 10/2017-CT(Rate) dated 28.06.2017.

5.4.4. Coming to the Valuation part, the Applicant and the Central Hub qualifies to be related persons in terms of Explanation to Section 15(5) of CGST Act, 2017. Hence, value cannot be determined as per Section 15(1) of the CGST Act and consequently Section 15(4) of the CGST Act read with Chapter IV of CGST Rules, 2017 i.e. Rule 27 to Rule 35 of the CGST Rules will be applicable.

5.4.5. Rule 28 of CGST Rules, contains the provisions for determining the value of supplies between the related persons, which reads as follows:

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and

recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person: Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

5.4.6. Based on the above Rules, in case where the 'open market value' is available, then valuation of the supply shall not be governed by clause (b) or (c) of Rule 28 of CGST Rules. Further, in case, where the recipient of service is eligible to claim the full ITC, the value shall be determined as per the second proviso to Rule 28 of CGST Rules.

In view of the above, we give the following ruling:

RULING

1. For Question 1: The activity performed by the Applicant i.e. sub-licensing of the software by the Applicant to end-users in India would squarely fall under 'Supply of goods', and GST shall be applicable on the same in terms of Section 9 of CGST Act, 2017 and the taxable value will be the actual transaction value which the Applicant has charged the end user for sub licensing the software.
2. For Question 2: The amount received from the Central Hub in the form of Market support fees by the Local Operating Entity(the Applicant) is an additional consideration charged towards the supply in this case which will form part of the value of supply as per the provisions of section 15 of the GST Act.

3. For Question 3: The taxable value for the Operating Fees paid to Central Hub by the Applicant pursuant to the said arrangement shall be determined as per Rule 28 of the Tax Valuation Rules prescribed in CGST Rules 2017.

20.6.2023

(N.USHA)
Member (SGST)

AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
TAMILNADU

(R.GOPALSAMY) 20/06/23
Member (CGST)

To
M/s. AVEVA Software Private Limited,
Smart work coworking spaces Pvt Ltd,
Block 3, A3 and A4, North Phase,
Guindy Industrial Estate, Guindy,
Chennai, Tamilnadu-600032.

//BY RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes, IInd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Chennai South Commissionerate, Chennai -35.
4. The Assistant Commissioner, Ekkatuthangal Assessment Circle, Chennai -35.
5. Master File/ Spare – 2.