

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Smt. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)
(2) Shri. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27ABGPJ8288G1Z8
Legal Name of Applicant		M/s. MAYANK VINODKUMAR JAIN
Registered Address/Address provided while obtaining user id	201/202, Anna Rebecca Apartment, 2nd Floor, Kamptee Road, Behind Dua Continental, Nagpur-440001.	
Details of application		GST-ARA, Application No. 57 Dated 18.10.2019
Concerned officer		Asstt. Commissioner CGST & Central Excise Division City Nagpur-II, Nagpur.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Mr. Mayank Jain (Applicant) is registered under GST having GSTIN 27ABGPJ8288G1Z8 with effect from 01/07/2017. Applicant has entered into contract with M/s. Laxmi Kattha Udhog Pvt Ltd a company registered in NEPAL for providing Cargo Handling Services for its goods imported into NEPAL vide agreement dated 01/04/2019.
Issue/s on which advance ruling required		(vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s. MAYANK VINODKUMAR JAIN**, the applicant, seeking an advance ruling in respect of the following question:

The Applicant requests this Authority to decide as to whether the aforesaid services proposed to be rendered qualify as Export of Services" under Section 2(6) of the Integrated Goods & Services Tax Act, 2017 or not.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

- 2.1 Mr. Mayank Jain (Applicant), registered under GST Laws, has entered into contract with M/s. Laxmi Kattha Udhyog Pvt Ltd a company registered in NEPAL for providing Cargo Handling Services for its goods imported into Nepal from Vietnam.
- 2.2 As per the terms of agreement, applicant is required to monitor the loading, inspection of quality of the goods, weight inspection, at the source destination, monitor shipping from Vietnam to Nepal.
- 2.3 The goods are imported to Nepal through sea route via Vishakhapatnam/Kolkata Port. Since NEPAL is land locked country, it has entered into Treaty of Transit with India for freedom of transit including permanent access to and from the sea to promote international trade. The bilateral Treaty of Transit and its Protocol and Memorandum prescribe in detail the cargo clearance procedures, customs processing of documents, mode of transport, transit route, border entry points and duty insurance requirements.
- 2.4 The goods are shipped from Vietnam Port to Vishakhapatnam/Kolkata. On arrival the goods are sealed by the Nepal custom officer at Vishakhapatnam port by an electronic lock and directly sent to Nepal borders for further action. On arrival in Nepal border, the custom officers open the Electronic lock and clear the shipment. Though the goods enter into India but as per the Treaty the Traffic-in-transit shall be exempt from Customs duty and from all transit duties and charges.
- 2.5 The applicant is required to coordinate with the agencies at Customs station at port for its clearance for further transshipment. Further, the applicant assists the company at border



check post of Nepal for its onward movement to the factory of company. Thus services are provided by applicant at the Customs station at port and at border check post of both the source and destination countries. For the services so provided, the company pays the applicant fees in foreign currency or its equivalent currency in INR.

- 2.6 The applicant has reproduced the provisions of Section 2(6) of the IGST Act and submitted that all the conditions mentioned therein are satisfied by them and therefore the services proposed to be rendered by the applicant would be covered under the definition of "Zero Rated Supply".

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

The submissions made by the jurisdictional officer are as under:-

- 3.1 It is submitted that the applicant satisfied all the conditions pertaining to Export of Services as per Section 2(6) of the Integrated Goods & Service Tax Act, 2017.
- 3.2 The payment for services rendered by the applicant will be received in equivalent INR and they have not submitted any documentary proof whether the RBI has allowed payment in Indian Currency.

04. HEARING

Preliminary hearing in the matter was held on 02.01.2020. Mr. Mayank Jain, Proprietor and Mr. Milind Patel, C.A., appeared and requested for admission of their application. Jurisdictional Officer Mr. Onkarnath Kesari, Inspector, Division City Nagpur- II, Nagpur appeared and made written submissions. We heard both the sides.

05. OBSERVATIONS AND FINDINGS

We have gone through the facts of the case and the written submissions made by both, the applicant and the departmental authority. We find that the issue before us is in respect of export of services i.e whether the subject services proposed to be rendered by them qualify as Export of Services" under Section 2(6) of the IGST Act, 2017 or not.

- 5.2 Before we decide the question raised in this application it is essential that it be first determined whether or not the activities undertaken by the applicant pertains to matters or questions specified in Section 97(2).
- 5.3 From a perusal of transaction as discussed above in their submissions, we observe that the supply of services is to an entity situated outside India and therefore to answer their

question we will be required to discuss the provisions of Section 13 and Section 2(6) of IGST Act, 2019, pertaining to export of services. Thus, to decide the issue, this authority will have to discuss the place of supply in the subject case since "Export of services" means the supply of any service when, (i) The supplier of service is located in India; (ii) The recipient of service is located outside India; (iii) The place of supply of service is outside India; (iv) 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); and (v) 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.

5.4 As per the Section 97(2) of CGST Act, the questions on which advance ruling is sought under this Act, shall be in respect of, matters or issues mentioned in Section 97 (2) (a) to (g) only. We find that, "place of supply of services" does not find mention in the said Section 97 mentioned above.

5.5 Further, the Appellate Authority of Advance Ruling (AAAR), Maharashtra State has decided on the subject matter i.e. "Export of services", in the case of M/s. NES Global Specialist Engineering Services Pvt. Ltd. vide its Order No. MAH/ AAAR/55-R/03/2019-20 dated 02.08.2019 and have made observations as under:-

"16: On perusal of the provision of section 97(2), we find that the question on the determination of place of supply has not been covered in the above set of questions, on which advance ruling can be given. Therefore, we do not have jurisdiction to pass any ruling on such questions which involve the determination of the place of supply of goods or services or both.

19: Thus, in view of the provision under section 2(6) of IGST ACT laid down in respect of export of services and above discussed provision laid down in section 97(2) of the CGST Act, 2017 encompassing the specific questions, which are sought under advance ruling, it can decisively be inferred that the questions raised by the respondent before Advance Ruling Authority were beyond the scope and jurisdiction of Advance Ruling, and hence do not warrant any ruling thereon".

5.6 We also find that Appellate Authority of Advance Ruling, Maharashtra State (AAAR) has taken the same views on the similar matters before them namely, M/s Micro Instrument (Mrs.Vishakha Prashant Bhawe), vide appeal order no. MAH/AAAR/SS-RJ/26/2018-19

dated 22.03.2019, M/s Sabre Travel Network India Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/30/2018-19 dated 10.04.2019, M/s Asahi Kasei Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/01/2019-20 dated 19.06.2019, and in the case of M/s Segoma Imaging Technologies India Pvt Ltd, vide appeal order no. MAH/AAAR/SS-RJ/28/2018-19 dated 03.04.2019.

5.7 Relying on the abovementioned decisions of the Appellate Authority for Advance Ruling (AAAR) and in view of the provisions of Section 97 of the CGST Act, 2017, we find that this authority is not allowed to answer the subject question.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 57/2019-20/B-

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Mumbai, dt.

22/01/2020

For reasons as discussed in the body of the order, the questions are answered thus –

The present application filed for advance ruling is rejected, as being non-maintainable as per the provisions of the GST Act, 2017 and Rules made thereunder.



—sd—
P. VINITHA SEKHAR
(MEMBER)

—sd—
A.A.CHAHURE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.