Price ₹ 300/- per copy

No. MCS/149/2019-21 / R.N.I. No. MAHENG/2012/47041 - Total Pages: 156

THE CHAMBER'S JOURNAL

Vol. VII | No. 4 January 2019

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INDIRECT TAXES

GST – Recent Judgments and Advance Rulings

A. Rulings by Appellate Authority of Advance Ruling

1. M/s. Opta Cabs Pvt. Ltd. – AAAR Karnataka (2018-TIOL-26-AAAR-GST)

Facts, issues involved and query of applicant

Applicant is in the business of Taxi Aggregation Service and Taxi Service. The taxi driver who provides the service in his own name does the billing for the taxi service. The taxi driver collects the amount from the customer on the completion of the trip. The applicant does not collect any amount on behalf of the taxi driver. Applicant collects monthly service charges from taxi drivers for usage of IT services i.e., Mobile App and Billing related services. The applicant is duly discharging their GST liability on service charges collected from the taxi drivers. As far as taxi drivers are concerned, customers pay them directly and their collections may not necessarily exceed ₹ 20 lakhs p.a.

Applicant seeks ruling as to whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether the applicant is liable to pay GST on this said amount.

Discussions by and Observations of AAR

The service is provided by the taxi operator and the amount is collected from the customer by him. The applicant company has no role to play other than issue of invoice on behalf of the taxi operator to the customer. The customer would log in to the application of the applicant and book the taxi.

Sub-section (5) of section 9 of the CGST Act, 2017 states as under:

"(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable to pay tax in relation to the supply of such service."

Notification No.17/2017 - Central Tax (Rate) dated 28th June, 2017 notifies that the tax on intra-state supplies by way of transportation of passengers by a radio-taxi, motor cab, maxi cab shall be paid by the electronic commerce operator.

A conjoint reading of the above provisions makes it clear that the electronic commerce operator shall be liable to pay tax on services supplied through

them by way of transportation of passenger in motor cab or maxi cab or motor cycle or radio-taxi. Further electronic commerce operator shall be deemed to be the supplier in such cases.

There is no doubt that the services of transportation of passengers is supplied to the consumers through the applicant and by virtue of above mentioned provision, it shall be deemed that the applicant would be a deemed supplier, liable to pay tax in relation to the supply of such transportation services by the taxi operator.

Ruling of AAR

In accordance with the provisions of section 9(5) of the CGST Act, 2017 read with Notification No. 17/2017-Central Tax (Rate) dated 28-6-2017, the applicant is liable to pay tax on the amounts billed by him on behalf of the taxi operators for the service provided in the nature of transportation of passengers through it.

Appeal to the AAAR and Observations of AAAR

Aggrieved by the above-referred ruling, the applicant preferred an appeal to AAAR against the same. The appellant reiterated the grounds stated in the application and further stated that in order to fall under the definition of "e-commerce operator" it is essential for "such services are supplied through it". However, in the appellant's case the services were not provided through it but only booked through it. The AAAR observed that the services provided by the appellant falls under the definition of "e-commerce service" and it is thus an e-commerce operator. Further, it observed that booking a cab is an integral part of supply chain and hence there is no merit in appellant's argument that services are only booked through it and not supplied through it.

Ruling of AAAR

The AAAR upheld the order No. KAR ADRG 14/2018 dated 27-7-2018 passed by Karnataka Advance Ruling Authority and dismissed the appeal filed by the appellant.

B. Rulings by Authority of Advance Ruling

1. M/s. Enmarol Petroleum India Pvt. Ltd. – AAR Maharashtra (2018-TIOL-285-AAR-GST)

Facts, issues involved and contention of the Petitioner

The applicant is an authorised dealer of M/s. Innospec Limited, a Company registered in England & Wales. The applicant sells the marine fuel additive chemicals of Innospec Limited to shipping lines in India and outside India.

In the instant case, M/s. AZA Shipping Pvt. Ltd. ("AZA"), an Indian Company, placed a purchased order ("PO") on the applicant for 75 ltrs. of Innospec Fuel Specialties Octamar L15 product. The said requirement had been specifically placed for making delivery at Singapore Port for a vessel M T CHAFA. On the receipt of the above-confirmed PO from AZA, the applicant placed PO on M/s. Innospec Limited for making delivery of aforesaid goods at Singapore Port. Thereafter, M/s. Innospec Limited delivered the goods through its Singapore Logistics Partner M/s. CWT Logistics Pte. Ltd. ("CWT") to the vessel M T CHAFA at Singapore Port. Thereafter, Innospec Limited raised invoice on the applicant. The applicant raised invoice on its customer AZA. The applicant states that it has not charged GST on the invoice raised to AZA considering the said supply to be non-taxable under GST in India.

Applicant has sought advance ruling for the following questions:

1. *Whether the applicant is liable to pay GST on supply of goods located outside India to customers within India without physically bringing the goods to India?*

2. *Whether the out & out supplies in the facts of present case will be considered as export supplies or exempted supplies for the purpose of the GST?*

The applicant submits the following grounds for non-taxability:

The said supply does not take place in India

The applicant submits that as per Section 1 of CGST Act and Section 1 of IGST Act, the GST Act applies to whole of India including the State of J & K. In the present case, though the supplier and recipient is located in India, the supply in form of sale of goods has taken place in Singapore where the goods are located and the delivery has been given at Singapore Port. Singapore does not fall in the said definition of India and hence such supply would not be covered under the ambit of CGST Act and IGST Act. Hence, aforesaid transaction would not be liable to GST.

The said supply is an out & out transaction

The transaction is neither import of goods into India nor export of goods outside India. The applicant submits that following provisions are relevant for purpose of understanding the out & out transaction:

Section 2(5) and 2(10) of IGST read as under:

"(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India

(10) ''import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;"

Above definitions are with respect to movement of goods and not the location of supplier or recipient. Place of supply of an import or export of goods is determined u/s. 11 of IGST Act, extracted as under:

"The place of supply of goods,—

(a) imported into India shall be the location of the importer;

(b) exported from India shall be the location outside India."

In the instant case, there is no movement of goods into India or from India, therefore, Section 11 will not apply.

The place of supply for the said transaction cannot be determined u/s. 10 of IGST Act

The applicant further submitted that Section 10 is also not applicable, as it can apply only when movement of goods has taken place within India. In the present case, no leg of the transaction is even remotely taking place in India, therefore, Section 10 of IGST will not apply.

Section 7(5) of IGST Act, 2017 is also not applicable

Relevant extract of Section 7(5)(a) reads as under:

"(5) Supply of goods or services or both,—

(a) when the supplier is located in India and the place of supply is outside India;

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

The applicant submitted that to apply Section 7(5)(a) two variables should be available: (a) the supplier is located in India and (b) the place of supply is outside India. In the present case, both the variables are absent. Location of supplier of goods is not defined under GST law, only location of supplier of service is defined. Even if it is interpreted contextually, then the same has to be located *qua* a particular supply made under GST law. Since sale is taking place outside India, it is not a supply under GST law.

The place of supply for the aforesaid transaction can't be determined under GST law neither u/s 10 nor u/s 11 of IGST Act. Thus, second variable is also not determinable. Therefore, Section 7(5)(a) is not applicable.

The goods are not consumed in any state of India

The applicant submitted that GST is a destination based consumption tax and the same is taxable in India only if the consumption of goods or services take place in India. Since in present case, the consumption of the goods does not take place in India, the transaction will not be taxable in any State of India.

Discussions by and observations of AAR

The applicant would be purchasing goods from M/s. Innospec on the basis of PO received from customers in India and said goods would be delivered by M/s. Innospec from outside India to ship / vessel of customer of the customer which is also outside India i.e., Singapore. Thus, the transaction is similar to selling of goods on high sea sales basis since in both the cases the goods purchased do not cross the custom frontiers of India. Therefore, the Chapter IV of IGST Act is to be referred to confirm the nature of supply of the aforesaid goods i.e., intra-state or inter-state.

Section 7(2) of the IGST Act reads as under:

"(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce."

The aforesaid goods are delivered from a place outside India to a place outside India, i.e. these goods have not crossed the customs frontiers and therefore, falling u/s. 7(2) of IGST Act. Since nature of supply is inter-state, therefore, GST will be leviable u/s. 5 of IGST Act. However, proviso of Section 5 of IGST Act reads as under:

"Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962."

Therefore, as per Section 7(2) and proviso to Section 5(1) of IGST Act, it is very clear that in respect of import goods there is no levy and collection of GST.

Following definitions are to be taken into account to understand question (2):

Section 2(47) of CGST Act, "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Section 2(78) of CGST Act, "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.

Thus, it is very clear that goods sold in the subject transaction are non-taxable supply. The above legal position is further reiterated and confirmed by Circular No. 3/1/2018 – IGST dated 25-5-2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing.

Ruling of AAR

In respect of question (1), the applicant is not liable to pay GST on aforesaid supply of goods.

In respect of question (2), the supplies would be "non-taxable supply", therefore, it will not be considered as export supplies.

2. Lions Club of Poona Kothrud – AAR Maharashtra (2018-TIOL-299-AAR-GST)

Facts, Issues involved and contention of the petitioner

The applicant is Lions Clubs of Poona Kothrud. The applicant consists of association of persons, joined together to undertake social activities without any profit motive. Funds collected as fees are pooled together to be expended for meeting expenses and forwarding to the international office for administrative expenses. The annual dues which are received from the members is used by the applicant to defray the subscription price of the Lion Magazine, and also holds programmes, Seminars and Institutes for Leadership Development and these programmes are only for the Lion members and not for non-members. These funds received from members are utilised for mutual benefit of members. Surplus, if any, is used for charitable activities. Funds collected by Lions Club can be broadly divided into following categories: (a) Club member fees (b) District fees (c) Cabinet member fees.

Applicant has sought advance ruling for the following question:

1. *Since the amount collected by individual Lions Clubs and Lions district is for convenience of Lion members and pooled together only for paying meeting expenses & communication expenses and the same is deposited in single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor any goods being traded. Whether registration is required?*

The applicant submitted that **aforesaid transaction(s) not covered u/s. 7 of CGST Act.** To tax a transaction between an association or club and its members, said transaction must either fit under 7(1)(a) or (c) of 'Supply' as under:

"(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 or furtherance of business;

(c) activities specified in Schedule I, made or agreed to be made without a consideration."

The term 'Business' in clause (a) above is defined u/s. 2(17)(e) of the Act as under:

"provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its member".

In case of Lions Club, the members of the club only come together for a social cause and there is neither furtherance of business nor benefits or facilities to the members. According to the definition of supplier u/s. 2(105) and recipient u/s. 2(93) of the Act, 2017, the recipient is the "person" who pays the consideration to the supplier. Hence two different persons have been envisaged by the law to tax a transaction being supply made for a consideration. Now the question remains that whether the club and its members can be treated as different persons?

In Service Tax Regime, Court in several cases held that in absence of deeming fiction, treating club/association & its members as distinct persons, service tax shall not be payable. Thereafter to nullify these decisions w.e.f. 1-6-2012 clause (a) to *Explanation 3* to Sec 65B inserted to create the deeming fiction of distinct persons. However, there is no deeming fiction to treat association and members as distinct persons in Section 2(84) of the Act or elsewhere in the GST law. Further, members are not covered u/s. 25 of the Act as distinct persons.

However, Circular No. 35/9/2018-GST dated 5th March 2018 invoked the concept of deemed sale as provided under Article 366(29A) of the Constitution. It must be noted that clause (e) of said Article only enables to tax **supply of goods** by an association to its members as deemed sale. It does not enable to tax supply of service as a deemed service. Even Para 7 of Schedule II only covers **supply of goods** by any unincorporated association. It does not cover supply of services. Therefore, unless provision similar to that deemed sale is made either in the Constitution or the Act, services provided by an association to its members cannot be taxed.

Entry 2 of Schedule I provides that supply of goods or services or both between related or distinct persons as specified u/s. 25 of the Act, when made is the course or furtherance of business (even if without consideration), shall be taxable. *Explanation* u/s. 15 of the Act defines a list related person, on perusal of the same it can be concluded that there must be two or more persons who can be considered as related person. As an association and its members are the same because of principle of mutuality, they cannot be regarded as related person. Therefore, aforesaid transaction will not be covered within the scope of supply u/s. 7 of the Act.

Following were the contentions of the Jurisdictional officer:

Earlier in Service tax regime, deeming provision had been introduced w.e.f. 1-7-2012 to the effect that the club and members were decided to be separate persons. In GST regime, the definition of

"business" u/s 2(17)(e) is enough comprehensive to include **a service by a "club" by way of a subscription to its members** in the term "business".

The club organizes seminars and Leadership Institute programs for its members and not for non-members. Hence, the funds received are used for the mutual benefit of members. This amounts the club to engage in the activities which may amount to "facilities" or "benefits" to the member. In context to above, this is very much essential to decide whether the applicant falls in/out purview of the definition under "business" u/s. 2(17) of the CGST Act 2017. In final hearing, written submissions were made by the club that they are not providing any facilities to their members.

Discussions by and observations of AAR

The purpose and activities as mentioned in constitution and bye-laws of the club have been gone through by the authority and formed observations that the above stated section 2(17)(e) speaks about **subscription by members, however, this subscription must be for the facilities or benefits** that would be provided. As can be seen, the club is not formed to provide any supply of goods or services to its members *qua* the fees received from them. There being no supply *qua* the fees received, there arises no occasion to visit the definition of 'Supply' for the purposes of the Act. Therefore, no more discussions in this matter would be required.

The matter discussed by official, about seminars for Leadership Development which is organised for the members, has been dealt with. Such activities do not appear to be for transforming members into leaders generally, but for the members to become leaders to perform towards the causes of the club. Thus, here too, the amounts spent are for building and empowering a human resource to help perform the activities of the club in a better way.

Ruling of AAR

In respect of above question, the applicant is not required to get registered under GST for the aforesaid supply of services.

3. M/s. Micro Instruments – AAR Maharashtra (2018-TIOL-287-AAR-GST)

Facts, issues involved and contention of the petitioner

The applicant, M/s. Micro Instruments, Mumbai, ("Micro") is a sole proprietary concern, and is carrying on trading business in Laboratory Instruments, its spare parts, Laboratory Instruments / equipments, and other related activities such as servicing, repairs and maintenance of Laboratory instruments / equipments. One of the activities of the Micro relates to providing services to its Principals in Germany, by way of procuring Purchase Orders (PO) from the parties desirous of purchasing advanced type of Laboratory Equipment, by negotiating the terms of supply including fixation of price above the floor price fixed by the Principals (known to applicant alone). If Micro can negotiate better price than the floor price, the difference between the floor price and actual price is given to Micro by way of "commission" in "convertible foreign exchange".

Modus operandi of the negotiated transactions can be summarised below:

1. The prospective customer (e.g., "M/s. Panama Laboratory" hereinafter referred as "Panama") in India places PO directly on the Principals at Germany. Principal directly supplies the equipments to Panama.

2. In the majority of cases, barring exceptions, the PO states the name of Micro, and also mentions that Panama will be entitled to have some "discount in kind", like getting some items free of cost such as TV set, a camera etc., which is to be provided by Micro as a necessary charge on the

"commission" it receives in convertible foreign exchange.

3. Once the PO is completed, the principal issues a credit note for the commission which is remitted in freely convertible foreign exchange. Micro was not issuing any document and making accounting based on credit note.

Applicant has sought advance ruling for the following questions:

1. *Whether the "Commission" received by the applicant in Convertible Foreign Exchange for rendering services as an "Intermediary" between an exporter abroad receiving such services an Indian importer of an equipment, is an "export of service" falling under section 2(6) & outside the purview of section 13(8)(b), attracting zero rated tax under section 16(1)(a) of IGST Act, 2017?*

2. *If answer to above Q. 1 is in the negative, whether the impugned supply of service forming an integral part of the cross-border sale/purchase of goods, will be treated as an "intra-state supply" under section 8(1) of the IGST Act read with section 2(65) of SGST Act attracting CGST/SGST? And, if so, at what rate?*

In the present case, Micro being the supplier of service (located in India) and customer i.e., recipient of service (i.e., supplier of goods is located outside India, Germany), Section 13 of the IGST Act, 2017 gets attracted. It appears from aforesaid discussion that Section 13(8)(b) of IGST Act, 2017 covers the present case which is reproduced below-

"(8) The place of supply of the following services shall be the location of the supplier of services, namely:

(b) Intermediary services."

The term "Intermediary" is defined in Section 2(13) of the IGST Act, which says:

"(13) 'Intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account".

Consequently, Micro being an agent or broker between the German seller of the goods and the Indian buyer of the goods, it shall be covered under the definition of Intermediary under Section 2(13) of the IGST Act; but may not be regarded as providing "Intermediary Services", which expression is a coined phrase by the draftsman, and not defined in any GST Law. Apparently, "Intermediary" is an adjective of the noun that follows, namely, "services".

It may be argued that the "Intermediary" providing such agency or broker services may fall in the expression of "Intermediary services" appearing in Section 13 (8)(b) of the IGST Act, 2017. If it were to be true interpretation, the registered place of Supplier (Micro) being in India, the place of supply becomes 'India/ Taxable Territory' and hence CGST + SGST may get attracted. Since place of supply is in taxable territory, the aforesaid transactions cannot be treated as "Export of Services" as per Section 2(6) of IGST Act, 2017.

GST effective from 1st July, 2017 is a destination based taxation seeks to levy and collect tax based on location of consumption. Now, look at a case, in which Micro procures PO from the customer at Gujarat. By virtue of Section 13(8)(b) the Place of Supply will be Maharashtra. Therefore, the destination based taxation policy would get a jolt; since the actual use of the goods imported would be in Gujarat.

Now for the new approach, two definitions of "**Intermediary**" and "**Agent**" under Section 2(13) of the IGST Act, 2017 and Section 2(5) of the CGST Act, 2017 respectively, are important. Since Micro does not supply or receive goods/ services on behalf of anyone, Micro carries on business of its own, it is certainly not an "Agent". However, surely the activities of Micro are in the nature of "intermediary", for bringing together

the Principals abroad (Germany) and the Indian Customer (M/s. Panama Laboratory), who want to buy a high end product. What is received by the Micro may be called 'brokerage' (even if it is called "commission") for the sale of goods i.e. for import of goods.

All the analysis & discussion above, finally boils down to and depends on the true meaning and purport of the expression: "intermediary services" in section 13(8) (b) of the IGST Act. If it is not the same thing as "intermediary", the provisions of Section 13 (8) (b) will not apply; and consequently, provisions of section 7 (5) (a) of the IGST Act will get attracted, as can be seen from the quoted provision:

"(5) Supply of goods or services or both, -

(a) When the supplier is located in India and the place of supply is outside India."

In that case, Section 16 of the IGST Act will apply and there would be two options available:

a) Export the services under bond/ LOU without payment of IGST Act and claim refund of un-utilized input tax credit; or

b) Supply export services on payment of IGST and then claim refund of such tax under section 54 of the CGST Act/ Rules, 2017.

Now one has to construe the true meaning of the undefined term, namely, "intermediary services" which is clearly different from the term "intermediary" defined u/s. 2(13) of the Act.

It may be noted that the expression "Intermediary services" was firstly adopted by the Place of Provision of Services Rules, 2012 (POPS Rules, 2012). Rule 9 (c) of the said rules has been placed in its new GST avatar as Section 13(8)(b) of IGST Act. A clarification was issued by CBEC on June 20, 2012 on the concept of "Intermediary services" which is reproduced below:

"5.9.6 'What are "Intermediary services"? Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alterations or further processing. Thus, an intermediary is involved with two supplies at any one time:

i. The supply between the principal and the third party; and

ii. The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged."

For the purpose of this rule, "an intermediary" in respect of goods (e.g., Selling agent) is excluded by definition. Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service, but provides the main service on his own account. In this connection, one must take a note of the below mentioned amendment made by notification No. 14/2014-Service Tax, to the definition of "intermediary" to include the intermediary of goods in its scope.

"In Rule 2 for clause (f), the following clause shall be substituted, namely,

(f) "Intermediary" means a broker, an agent, or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account."

When this amended definition of "intermediary" as of 01-10-2014, was rebottled in the GST law, two changes happened:

i. The original and basic distinction as to the "main" service and "intermediary" in the context of two co-existing services did not figure in the new definition in section 2 (13) IGST Act; and

ii. The definition of consignment agent has been shifted to Section 2(5) of the CGST Act.

The pivotal issue in the case on hand turns on the interpretation of the expression: "intermediary

services" in Section 13 (8) (b) of the IGST Act. If the legislature wanted to have wider meaning of "Services", it would have used phraseology "Services of Intermediary" rather than "Intermediary Services". It is not open to inject definition of "Intermediary" as amended in 2014, by interpretative process when the context of Section 13(8) is specifically restricted & made applicable to specified services. Thus, the language of a taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. *[J. Srinivasa Rao v. Govt. of A.P. and Anr. 2006(13) Scale 27]*

In other words, the clause must be made applicable only if intermediary is acting as broker / agent in the main transaction of supply of services between the service provider and service recipient; not where the seller is supplying "goods" to the buyer or recipient. It is, therefore, follows that the section 13(8)(b) cannot be held as taking away the benefit of export of service to Micro as the supplier of service in the taxable territory and the recipient is in non-taxable territory. Therefore, Section 7(5)(a) of the IGST Act shall apply and "zero rated tax" benefit u/s. 16 would be available.

However, concerned jurisdictional officer contended that CGST Act limits AAR to decide issue mentioned u/s. 97(2), therefore, question involving examination of place of supply cannot be taken by the AAR for lack of jurisdiction. Without prejudice to above, he further submitted that dealer's contention to differentiate intermediary service for services and intermediary service for goods is not correct. Further, it is established principle of interpretation that specific provision prevails over general provision. Hence, Section 13(8) being a specific provision will apply and place of supply will be "Location of Supplier".

Discussions by and observations of AAR

From the facts and submissions before the authority, it is found that Micro is covered by the definition of an intermediary because they are definitely acting as a broker and facilitating the process for sale of materials by their foreign principals to the Indian parties because they locate the customer, negotiate the prices and probably ensure the sale. **It is very clear from the facts that the applicant is neither providing services nor supplying the goods on their own account.**

The applicant will be covered u/s. 13(8)(b) based on aforesaid facts and place of supply will be location of supplier i.e., taxable territory. Therefore, intermediary services will not be classified as export of services. Further, contention of applicant that though he is covered under definition of "Intermediary", the services provided by him are not "Intermediary services" are not tenable for the reason that services provided are clearly the services as given in the definition of "Intermediary" as referred in the discussion above.

We now discuss Inter-state provisions as well as intra-state provisions under the GST laws. In the instant case, when the recipient is located outside India, provisions of Section 7(5)(c) shall be applicable which is reproduced below:

"Supply of goods or services or both-

c) In the taxable territory, not being an intra-state supply and not covered elsewhere in this section.

Shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce."

As per the intra-state provisions contained in Section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act, which would be applicable only for the place of supply of service where the location of supplier and the location of recipient of the services is in India. When recipient is located outside India, the provisions of Section 12 cannot be applied.

Ruling of AAR

In respect of question (1) above, the intermediary services are covered u/s. 13(8)(b) and therefore,

does not attract zero rated tax u/s. 16 of IGST Act.

In respect of question (2) above, said supply will be treated as inter-state supply and IGST will be levied @18%.

4. Shri Patrick Bernardinz D'Sa– AAR Karnataka (2018-TIOL-292-AAR-GST)

Facts, Issues involved and contention of the petitioner

Applicant, a land owner, entered into an agreement with M/s. NForce Infrastructure India P. Ltd., Builders & Developers, for development and promotion of "NForce – Pauline", a residential/commercial building at Valencia, Mangalore. The builder offered to develop and promote a multistoried residential apartment-cum-commercial building in the property belonging to the applicant as well as other land owners. The applicant had contributed only his land and in return gets his share of 50% of the total 12 flats constructed and also 50% share out of 4000 sq. ft. of commercial construction. The agreement was signed in January 2016 and construction is reported to be completed in January 2018.

After completion of construction, the applicant has sought advance ruling for the following question:

1. *"Whether the applicant being the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members?"*

Discussions by and observations of AAR

From the facts, contents of agreement and submissions made by applicant before the authority and in the context of the question raised by the applicant, authority examined and discussed Notification No.4/2018-Central Tax (Rate) dated 25-1-2018, which notifies the following classes of registered persons namely:

"a) Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complete, building or civil structure; and

b) Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights."

This notification notifies a person or persons who supply development rights to a developer / builder etc., against a consideration, which may be in the form of construction service, is liable to be registered under CGST/KGST Act 2017. It also provides that the person who supplies the development rights shall pay central tax at the time when the developer / builder transfers possession or right in the building by way of Conveyance deed or similar instrument. Therefore, the applicant being the person who has supplied development rights to a developer in respect of the land, is liable to registration and payment of tax.

Section 2(94) of CGST Act defines *"Registered person" as a person who is registered under Section 25 but does not include a person having a Unique Identity Number."* Further, on reading of Section 25 and Section 22, it can be stipulated that every supplier, who makes a taxable supply of goods or services or both, shall be liable to be registered, if his aggregate turnover crosses the prescribed limit.

Ruling of AAR

In respect of above question, the applicant is supplier of a taxable service by way of transfer of undivided share of land and hence is liable to register himself and discharge the tax accordingly.

5. Sonkamal Enterprise Pvt. Ltd. – AAR Maharashtra (2018-TIOL-301-AAR-GST)

Facts, issues involved and contention of the petitioner

Applicant having its registered office at Mumbai and branch in Gandhidham (Gujarat), both being

registered under the GST Act, deals into imports of chemicals especially phenol which are currently being imported at JNPT Port (Maharashtra) and Kandla Port (Gujarat) and stored at a rented Customs warehouse at Haldia Port (Kolkata, West Bengal). They wish to import the chemicals at Haldia Port and sell the goods to the customers in Kolkata and nearby states by raising a bill in name of Mumbai GSTIN and charge IGST. However, they do not have any establishment or place of operation in West Bengal.

The applicant as per sec 10(1)(a) of IGST Act, 2017 states the place of supply as West Bengal. The applicant further states that it results into inter-state supply of goods as defined in sec 7(3) of IGST Act, 2017

Applicant has sought advance ruling for the following questions:

1. *Whether the procedure to raise the invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where they do not have any separate GST registration and charge IGST from Mumbai to the customers is correct?*
2. *If they do not need separate registration in West Bengal, can they do the transaction on Mumbai Head Office GSTIN, then in case of issuance of E-way bill is it correct to mention the GSTIN of Mumbai and dispatch place of Haldia Port?*

Discussions by and observations of AAR

Since the applicant wishes to import the chemicals viz., goods at Haldia port, the nature of supply is an inter-state supply as defined in Sec 7(2) of the IGST Act, 2017 as it deals with supply of goods imported into territory of India and not Sec 7(3) of the IGST Act, 2017 as stated by the applicant. Secondly, the place of supply of imported goods as per Sec 11(a) of IGST Act, 2017 shall be the location of the supplier and not Sec 10(1)(a) of the IGST Act, 2017. In this case, the applicant makes a taxable supply of goods from Mumbai HO as he does not have an office in West Bengal and hence as per Sec 22(1) of CGST Act, 2017 the place of supply of Goods shall be the location of supplier i.e., Mumbai HO and hence it appears that separate registration need not be taken in the State of West Bengal.

Ruling of AAR

In respect of question (1), the place of supply is the location of the importer situated in Maharashtra and the applicant will be clearing goods by paying IGST from their GSTIN issued in Mumbai. The sales, whether that that would be interstate or intrastate supply would depend upon the place of supply of goods and hence the applicant can clear the goods through invoices issued by Mumbai HO and not requiring to take any separate registration in West Bengal.

In respect of question (2), since the place of supply for the applicant will be Mumbai and goods will be cleared by raising an invoice through GSTIN of Maharashtra, they can further do the transaction on Mumbai HO GSTIN and can mention Mumbai HO office in the E-way bill and dispatch place as Customs Warehouse, Kolkata.

6. DRS Marine Services Pvt. Ltd. – AAR Maharashtra (2018-TIOL-304-AAR-GST)

Facts, issues involved and contention of the petitioner

Applicant is engaged in selecting and recruiting the shipping personnel on behalf of the foreign ship owner (M/s. Reefership Marine Services Ltd. "RMS") and have been charging administrative fees in this regard and paying GST on the same.

RMS has requested the applicant for disbursal of salary to the crew members from its side in view of the RBI Circular *(which allows to open foreign currency account and incur various expenses in connection with the management of ship/crew).* For this, the RMS would be transferring the sum of total salary to the applicant and then, applicant would be disbursing the salary to the crew members through banking channels. For this activity, the applicant would be charging/

invoicing service charges to the RMS and on the said charges it would be discharging its GST liability.

Applicant has sought advance ruling for the following question:

"Whether GST is applicable on Reimbursement of salary on behalf of foreign entity."

The applicant submitted that it is a pure agent as specified in Rule 33 of CGST Rules, 2017. It does not provide manpower to RMS but provides service for recruiting the manpower. Since the activity would be done on behalf of the RMS and applicant would not be deducting any charges from the amount of salary received for disbursement, the amount so remitted towards disbursal of salary would not be taxable under GST. Further, the applicant would be discharging its GST liability on service charges in connection with disbursal of salary.

Discussions by and observations of AAR

Based on facts, documents and submissions made before authority, it was found that the entire amount received by the applicant from RMS towards salary of crew is disbursed as such. Hence, with respect to this transaction it is crystal clear that the applicant is acting as a pure agent of RMS in view of Rule 33 of CGST Rules, 2017.

"Rule 33. Value of supply of services in case of pure agent –

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied:

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of services; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured;

(d) receives only the actual amount incurred to procure Such goods or services in addition to the amount received for supply he provides on his own account."

From the above provisions of Rule 33 and the facts of the proposed transaction explained by the applicant, it was found that the applicant will be acting as a pure agent of RMS in as much as the entire amount received by them as crews salary will be disbursed to the crew and no amounts from the said receipt will be used by the applicant for his own interest. In fact, for performing as a pure agent they will also be receiving compensation separately in the form of fixed fees to be charged as service charges on which GST has been discharged.

Ruling of AAR

In respect of above question, GST is not applicable on reimbursement of salary on behalf of the foreign entity.

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