

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND
SERVICES TAX**

(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/ RS-SK/33 /2020-21

Date- 24.12.2020

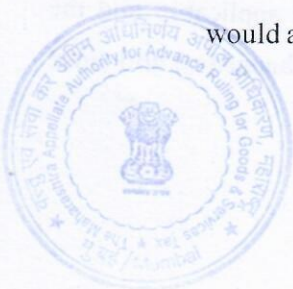
BEFORE THE BENCH OF

(1) Shri Rakesh Kumar Sharma, Member (Central Tax)

(2) Shri Sanjeev Kumar, Member (State Tax)

GSTIN Number	27AAACS0730L1ZG
Legal Name of the Applicant	Micro Instruments
Registered Address	15, Shri Kripa Ramakrishna Society, Ram Mandir Road, Kherwadi, Bandra (East), Mumbai- 400051
Details of the application	Miscellaneous Application dated 25.09.2020 seeking restoration of the Rectification Application, dated 21.08.2019, filed for seeking rectification in the MAAAR Order No. MAH/GST-AAAR/SS-RJ/26/2018-19 dated 22.03.2019, passed in respect of the Appeal filed against the Advance Ruling No. GST-ARA-23/2018-19/B-87 dated 10.08.2018
Jurisdictional Officer	Assistant Commissioner of State Tax (MUM-VAT-D- 906), Nodal Division -5, Mumbai
Details of the AAAR Order sought to be vacated	Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019 & Order No. MAH/AAAR/SS-RJ/26A/2018-19 dated 11.12.2019

1. 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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act and vice versa.



FACTS OF THE CASE

2. The Applicant i.e. M/s. Micro Instruments, 15, Shri Kripa Ramakrishna Society, Ram Mandir Road, Kherwadi, Bandra (East), Mumbai- 400051 is a sole Proprietary firm, carrying on business in the trade name: “**Micro Instruments**”, is a registered dealer under the Maharashtra Goods & Services Tax Act, 2017, and is an accredited distributor of M/s. Carl Zeiss Microscopy GmbH, Jena, Germany, (the “principal”), manufacturers of Laser Scanning Microscopes and Systems.
3. One of its activities relates to providing services to M/s. Carl Zeiss, Germany, by way of procuring Purchase Orders (P.O.) from the Indian customers, desirous of purchasing high-end advanced type of equipment, by negotiating the terms of supply, including fixation of price above the floor price, fixed by the Principal. Briefly, the modus operandi is:
 - (i) The prospective customer in India, places the P.O. directly on the Principal, and arranges for Letter of Credit for remittance of price in foreign currency; the principal directly supply the equipment to the party, which pays the price and gets the delivery from the Customs on payment of custom duty, IGST, as may be applicable.
 - (ii) Once the P.O. is completed, the Principal issues a “Credit Note”, for the “Commission”, which is remitted to the Appellant in freely convertible Foreign Exchange, normally in Euro Currency.
4. Based on the aforesaid facts, the Applicant had filed an application dated 15th May 2018, before the Maharashtra Advance Ruling Authority (hereinafter referred to as “**the MAAR**”), seeking Advance Ruling as to “*Whether the “Commission” received by the Applicant in convertible Foreign Exchange for rendering services as an “Intermediary” between an exporter abroad and an Indian importer of an Equipment, is an “export of services” falling under section 2(6) & outside the purview of section 13 (8) (b), attracting zero-rated tax under section 16 (1) (a) of the Integrated Goods and Services Tax Act, 2017?*”
5. The MAAR, vide Advance Ruling No. GST-ARA-23/2018-19/B-87, dated 10.08.2018, held that since the applicant was an “intermediary”, therefore, his services would be “intermediary services”. Therefore, section 13 (8) (b) would be applicable and the “place of supply” would be the location of the supplier (i.e. in Maharashtra) and since



the receiver is abroad, the transaction is an “inter-state supply” under section 7 (5) (c) of the IGST Act, 2017, and is liable to tax @ 18%.

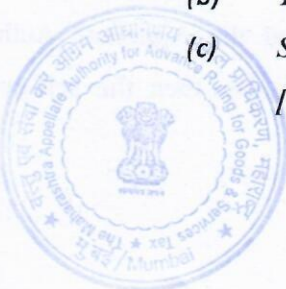
6. Subsequently, an appeal was preferred under Section 100 of the Central Goods and Services Tax Act, 2017, and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act” and “the MGST Act” respectively] by M/s. Micro Instruments, (hereinafter referred to as “the Appellant” or “the Applicant” interchangeably) against the Advance Ruling No. GST-ARA-23/2018-19/B-87, dated 10.08.2018, which was eventually disposed of, vide MAAAR Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019 holding that the application was not maintainable as deciding the ‘place of supply’ does not fall within the purview of Advance Ruling. However, the Appellant filed the application under section 102 of the CGST Act, 2017 on 21.08.2019 for seeking the rectification in the aforesaid Appellate Order dated 22.03.2019, issued by the Maharashtra Appellate Authority for Advance Ruling (hereinafter referred to as “the MAAAR”) on the following grounds:

- (i) That the MAAAR had committed an error of law, apparent on the face of record, in as much as while disposing the case, it had not applied its mind to the provisions of law, which gives it a jurisdiction to act in a particular manner. To support their contention, they drew analogy between the provisions laid down in section 102 of the CGST Act, 2017 governing the rectification of the advance ruling and the provisions of the Review Power enumerated in Order XLVII of the Civil Procedure Code 1908 by placing emphasis on the similar phraseologies, i.e., “**any error apparent on the face of record**” used in section 102 of the CGST Act, 2017 and “**mistake or error apparent on the face of the record**” used in Rule 1, Order XLVII of CPC, 1908. They further contended that since the aforesaid phraseologies used in the section 102 of the CGST Act, 2017 and Rule 1 of the Order XLVII of CPC, 1908 are similar, the case laws pertaining to the Review matters would reasonably be applicable to the matter related to the rectification of the Advance Ruling. For the said purpose, they cited few judicial pronouncements, which are mentioned herein below:

(a) *Satya Narayan Laxmi Narayan Hegde Vs. Malikarajun Bhavanappa Tirumale [AIR (1960) SC 137]*

(b) *T.S. Balaram, ITO Vs. Volkart Bros. [(1971) 82 ITR 50 (SC)]*

(c) *Sir Hari Shankar pal and Another Vs. Anath Nath Mitter and others [1949 FCR 36]*



(d) *Parsion Devi and Others Vs. Sumitri Devi and Others [1997 (8) SCC 715]*

(e) *Ruling pronounced by CESTAT in the case of Dinkar Khindria Vs. CCE, New Delhi, 2000 (38) RLT 442; 2000 (118) ELT 77 (T-LB)*

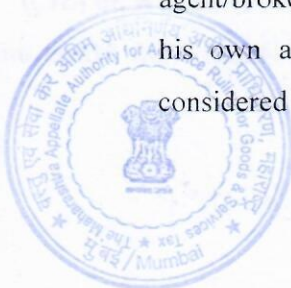
- (ii) That the emphasis had been placed on principle of law, laid down in the abovementioned case of Sir Hari Shankar pal and Another Vs. Anath Nath Mitter and others [1949 FCR 36], wherein the Hon'ble Federal Court had observed as under:

"That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law, which gives it a jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of record sufficient to bring the case within the purview of Order XLVII, Rule 1, Civil Procedure Code."

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By referring to the above cited judgment, the Appellant alleged that the MAAAR had committed an error, apparent on the face of records, as it did not apply its mind to the true meaning purport of the expression "intermediary services" and without discussing its ramifications on the issue at hand, disposed of the case "declaring that it has no jurisdiction" to give any opinion or verdict, because it lacked the basic jurisdiction to "determine place of supply" under section 97(2) of the CGST Act, 2017.

- (iii) That the Appellate Authority had also failed to appreciate the ramification of the CBIC Circular No. 107/29/2019 -GST, dated 18.07.2019, which clarifies the issues relating to the "intermediary services" in as much as the definition of intermediary, inter alia, provided specific exclusion of a person, i.e., that of a person who supplies such goods or services or both or securities, on his own account. Therefore, the supplier of services would not be treated as "intermediary" even where the supplier of services qualifies to be an agent/broker or any other person, if he is involved in the supply of services on his own account. They further pleaded that had the Appellate Authority considered and applied the aforesaid Board Circular, then the self-evident



answer would have emerged, wherein the Appellant, though an “intermediary” was covered by specific exclusion of a person i.e. a person who supplies such goods or services or both or securities on his own account, as per the clarification of the aforesaid Board Circular, and accordingly, the activities of the Appellant would have been covered by Section 13(2) of the IGST Act, 2017, which provides that the location of the recipient of service was the place of supply of service.

- (iv) A personal hearing in the matter was conducted on 20.11.2019, which was attended by Shri D.P. Bhawe, Advocate on behalf of the Appellant, wherein he reiterated the aforesaid submissions, as well as made additional submissions during the personal hearing, which was on the same line as that of the aforesaid submissions except the submissions on the determination of the jurisdiction with respect to the questions asked by the Appellant in their Advance Ruling Application. To corroborate their claim as to the Appellate Authority had the jurisdiction to decide even the place of supply of the goods or services or both, for the purpose of the determination of the liability to pay tax on any goods or services or both as laid out under section 97(2)(e) of the CGST Act, 2017, the Applicant had cited a Supreme Court Judgment in the case of *Smt. Ujjam Bai Vs. State of U.P., pronounced on 10.04.1962.*

7. In pursuance to the aforesaid application dated 21.08.2019, seeking rectification in the Original MAAAR Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019, the MAAAR passed the Order No. MAH/AAAR/SS-RJ/26A/2018-19 dated 11.12.2019, rejecting the said application dated 21.08.2019 on the ground that the interpretation of the clause (e) of Section 97(2) of the CGST Act, 2017, put forth by the Applicant, was debatable, and therefore, the allegation of the Applicant in as much as that there was “an error apparent on the face of the record” was not sustainable, and hence, cannot be accepted.
8. Now, further to the aforesaid Order dated 11.12.2019, the Applicant has filed the present Miscellaneous Application dated 25.09.2020, seeking restoration of his earlier application dated 21.08.2019.



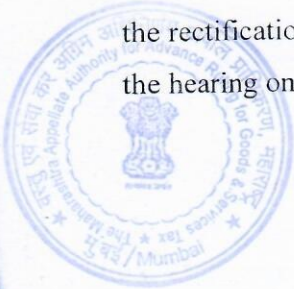
GROUND OF APPLICATION

9. The Applicant, in the subject application dated 25.09.2020, has mentioned the following grounds:

- (i) That both the Orders, passed by this Honorable Appellate Authority, are rendered as being not in conformity with the law, having regard to the recent *direct decision of the Honorable Kerala High Court in W.P.(C) No.32634 of 2019 M/s. Sutherland Mortgage Services Inc. Vs. The Principal Commissioner, Customs, Central GST and Central Excise, Kochi*, decided on 3rd February 2020, which had put an end to the so called "disputability" as to the true interpretation of Section 97 (2) (e) of the CGST/MGST Act, 2017, by unequivocally pronouncing in paragraph 23 that:

" 23. In the instant case, it is true that the issue relating to determination of place supply as foretasted is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Sec. 97(2) of the CGST Act, but there cannot be any two arguments that the said issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfils the definition of place of service, would also come within the ambit of the larger of issue of "determination of liability to pay tax on any goods or services or both" as envisaged in clause (e) of Sec. 97(2) of the CGST Act".

- (ii) That reference has also been made to the Hon'ble Supreme Court Judgment, dated 10.04.1962, in the case of *Smt. Ujjam Bai Vs. State of U.P.*, based on which it was submitted by the Applicant that the "jurisdiction" of the Advance Ruling Authority was wide enough to cover determination of place of supply, and therefore, the AAAR Orders dated 22.03.2019 and 11.12.2019, wherein it has been ruled that the determination of the place of supply does not come under the jurisdiction of the Advance Ruling as prescribed under Section 97(2) of the CGST Act, 2017, is not in conformity with the legal position settled by the Hon'ble Supreme Court vide the aforesaid judgment dated 10.04.1962, and hence, the said AAAR Orders dated 22.03.2019 and 11.12.2019 be recalled and the rectification application, filed on 21.08.2019, be restored for the purpose of the hearing on 'merit'.



RESPONDENT'S SUBMISSIONS

10. The Respondent, vide the letter dated 27.10.2020, made the following submissions:
- (i) That the impugned intermediary services, provided by the Applicant, cannot be treated as export of services under the GST law as the place of supply in intermediary services in terms of Section 13(8)(b) of the IGST Act, 2017 will be the location of the supplier of services, which, in the present case, is in India. Therefore, the place of supply will also be in India. Hence, the said intermediary services, provided by the Applicant, will not be export of services in terms of Section 2(6) of the IGST Act, 2017.
 - (ii) The Respondent/Jurisdictional Officer has also referred to the Hon'ble Gujrat High Court Judgement dated 24.07.2020 in the case of M/s. Material Recycling Association of India Vs. Union of India wherein the Hon'ble High Court has upheld the constitutional validity of Section 13(8)(b) of the IGST Act, 2017, by declaring that the said provision is neither ultra-vires nor unconstitutional attributable to the presence of Article 246A of the Constitution. The Hon'ble High Court further observed that the legislative policy intends to tax the intermediary services since the Service Tax Regime. It has further been held that such services are liable to CGST and SGST and not to IGST.
 - (iii) The Respondent further submitted that there was no provision under the CGST Act to admit the restoration application once the Rectification Order had been passed. He further contended that Judgement of Hon'ble Kerala High Court was not binding in the present case. Hence, the said Restoration Application may be rejected.

PERSONAL HEARING

11. The personal hearing in the matter was conducted on 10.12.2020 via virtual mode, which was attended by Shri D.P. Bhawe, Advocate, on behalf of the Applicant, and by Shri Tukaram Godse, State Tax Officer, on behalf of the Department/Respondent.
12. Shri Bhawe reiterated the written submissions, made in the paper book dated 07.12.2020. He also filed the submissions dated 14.12.2020, the extracts of which are mentioned herein under:

- (i) As regards the question regarding the legal provision under which the said Miscellaneous Application, dated 25.09.2020, has been filed, it has been submitted



by the Applicant that that since the impugned AAAR Orders dated 22.03.2019 and 11.12.2019 are contrary to the settled laws laid down by the Hon'ble Kerala High Court in the case of *Sutherland Mortgage Services Inc.* and that pronounced by the Hon'ble Supreme Court in the case of *Smt. Ujjam Bai Vs. the state of U.P.* on the matter of the Jurisdictions, the said Orders have been rendered as nullity, and hence, the same are required to be called back.

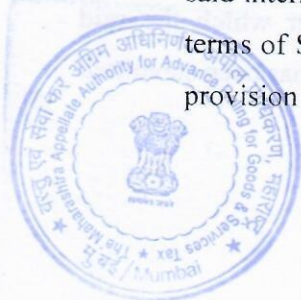
(ii) The Applicant also cited the legal authority in respect of the recalling of the subject Orders, wherein they referred to Section 101 and Section 102 of the CGST Act, 2017, to assert that under the provision of Section 102 of the CGST Act, 2017, the Authority has got the required power to amend any Order passed under Section 101 of the CGST Act, 2017 if "an error apparent on the face of the record" is noticed by the Authority or brought to the notice of the Authority by the Appellant, the Jurisdictional Officer or the Concerned Officer. Since the impugned Orders passed are in conflict with the law declared by the Court, it is "an error apparent on the face of record", the same has to be rectified by recalling or vacating the impugned Orders.

(iii) The Applicant also cited following judicial pronouncements to illustrate the circumstances under which any Order can be recalled by the Tribunals or Courts:

(a) *Hon'ble Allahabad High Court Judgment dated 05.02.2019 in the case of Santosh Kumari Vs. Prem Narain Verma And 6 Ors;*

(b) *Hon'ble Karnataka High Court Judgment dated 15 March, 2004 in the case of Commissioner Of Income Tax Vs McDowell And Co. Ltd. [(2004) 188 CTR Kar 518, 2004 269 ITR 451 KAR],*

13. Shri Tukaram Godse, the Jurisdictional Officer, reiterated the written submissions dated 27.10.2020, wherein it has, inter-alia, been submitted that the impugned intermediary services, provided by the Applicant, cannot be treated as export of services under the GST law as the place of supply in intermediary services, in terms of Section 13(8)(b) of the IGST Act, 2017, will be the location of the supplier of services, which, in the present case, is in India. Therefore, the place of supply will also be in India. Hence, the said intermediary services provided by the Applicant will not be export of services in terms of Section 2(6) of the IGST Act, 2017. He has further submitted that there is no provision under the CGST Act, 2017 to admit the restoration application once the



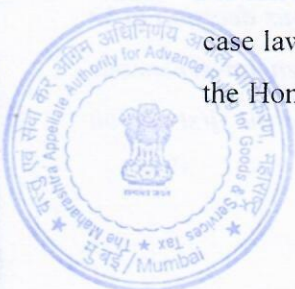
Rectification Order had been passed. Hence, the subject restoration application dated 25.09.2020 may be rejected.

APPLICANT'S SUPPLEMENTARY SUBMISSIONS DATED 16.12.2020

14. The Applicant has also filed supplementary submissions on 16.12.2020, informing that the Department has accepted the Ruling dated 03.02.2020 pronounced by the Hon'ble Kerala High Court in the case of *Sutherland Mortgage Services Inc. Vs. The Principal Commissioner, Customs, Central GST and Central Exercise, Kochi*.

DISCUSSIONS AND FINDINGS

15. Heard both the parties. We have also perused the various written submissions filed before us. We have also gone through the MAAAR Order No. MAH/AAAR/SS-RJ/26A/2018-19 dated 11.12.2019, which have been issued in pursuance to the Application dated 21.08.2019, vide which the Applicant had sought rectification in the Original MAAAR Order No. MAH/AAAR/SS-RJ/26/2018-19, dated 22.03.2019, under Section 102 of the CGST Act, 2017. On perusal of the aforesaid Order dated 11.12.2019, it is seen that all the submissions and contentions put forth by the Applicant have been duly considered by this Appellate Authority. It was only after due considerations of all the submissions and contentions, set forth by the Applicant, that this Appellate Authority had arrived at the conclusion that there was no error apparent on the face of the record, as being alleged by the Applicant, and hence, rectification application dated 21.08.2019 was rejected by observing that the interpretations, being drawn by the Applicant with regard to Section 97(2)(e) of the CGST Act, 2017 which empowers the Authority for Advance Ruling as well as the Appellate Authority for Advance Ruling to pronounce ruling on the question of "**determination of the liability to pay tax on any goods or services or both**", was clearly debatable in view of the differing interpretations drawn by this Appellate Authority, and therefore, this Appellate Authority vide Order dated 11.12.2019 had held that there was no error apparent on the face of the record, which would warrant rectification of the original Order dated 22.03.2019 passed by this Appellate Authority under Section 102 of the CGST Act, 2017.
16. For arriving at the aforesaid conclusion, this Appellate Authority had considered all the case laws, cited by the Applicant in his original application dated 21.08.2019, wherein the Hon'ble Courts and Tribunals have laid down the principles of law with regard to



the true interpretation of the term '*mistake*' or '*error*', when used with the term '*apparent*' in the various Acts, the presence of which in the Order would warrant the invocation of the rectification provision laid down under those particular Acts. One of the case laws, discussed by this Appellate Authority in its Order dated 11.12.2019, was the Hon'ble Supreme Court judgment in the case of **T.S. Balaram, ITO Vs. Volkart Bros. [(1971) 82 ITR 50 (SC)]**, wherein the Hon'ble Apex Court has held as under:

'Mistake' is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record, from which it is supposed to emanate are discerned. The word 'mistake' is inherently indefinite in scope, as to what may be a mistake for one may not be one for another. It is mostly subjective and dividing line in border areas is thin and indiscernible. It is something which is a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under section 154, it is not sufficient if there is merely a mistake in the orders sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word 'apparent' is that it must be something which appears to be so ex facie and it is incapable of argument or debate "

17. Another case law, cited by the Applicant, which was discussed by this Appellate Authority in its Order No. MAH/AAAR/SS-RJ/26A/2018-19, dated 11.12.2019, was the Hon'ble Supreme Court Judgment in the case of **Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8) SCC 715]**, wherein the Hon'ble Court had observed as under: -

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be



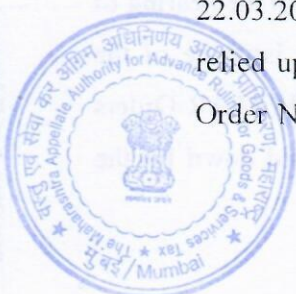
corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"."

18. Another case law, discussed by this Appellate Authority in the aforesaid Order No. MAH/AAAR/SS-RJ/26A/2018-19 dated 11.12.2019, was a decision of the Larger Bench of the Appellate Tribunal (CESTAT) in the case of **Dinkar Khindria v. CCE, New Delhi, 2000 (38) RLT 442; 2000 (118) E.L.T. 77 (T-LB)**, wherein it has been held that *"rectification of mistake is by-no means an appeal in disguise whereby an order even if it is not valid, is re-heard and re-decided. Rectification of mistake application lies only for patent mistake. Only in a case where the mistake stares one in the face and there could reasonably be no two opinions entertained about it, a case for rectification of mistake could be made out."* Larger Bench also held in that case that *"the decision on a debatable point of law or facts is not a mistake apparent from the record and the debatable issue could not be the subject of an order of rectification. Rectification of mistake does not envisage the rectification of an alleged error of judgment."*

19. Having discussed all the aforesaid case laws, cited by the Applicant, this Appellate Authority, in para 38 of its Order dated 11.12.2019, had observed as under:

In all the above cited cases, it is invariably laid out by the Hon'ble Courts that the mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word 'apparent' is that it must be something which appears to be so ex facie and it is incapable of argument or debate. Thus, Rectification of mistake does not envisage the rectification of an alleged error of judgment."

20. Thus, from the above, it can be clearly seen that all the submissions, including all the case laws, which were cited by the Applicant in his Application for Rectification of Mistake dated 21.08.2019, have been duly considered and discussed by this Appellate Authority in detail while deciding the said Rectification Application dated 21.08.2019, vide which the Applicant had sought rectification of the original Order dated 22.03.2019. It was only after considering all the contentions and various case laws, relied upon by the Applicant, that this Appellate Authority had passed the MAAAR Order No. MAH/AAAR/SS-RJ/26A/2018-19, dated 11.12.2019, wherein it had been



- held that there was no error apparent on the face of the record, which would warrant Rectification of Advance Ruling, as provided under Section 102 of the CGST Act, 2017.
21. Now, the Applicant has filed yet another application dated 25.09.2020, seeking the restoration of their earlier Application dated 21.08.2019, which has already been decided by this Appellate Authority vide its Order dated 11.12.2019 as discussed in detail in previous paragraphs. It is noteworthy that the Applicant has already exercised its right to file application for Rectification of Mistake in the original Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019, and this Appellate Authority has duly considered and decided the said Application for Rectification of Mistake vide its Order dated 11.12.2019, holding that there is no error apparent on the face of the record, in terms of the interpretation of the term *apparent 'error' or 'mistake'*, as held by the various Hon'ble Courts including Hon'ble Apex Court, and therefore it does not warrant any action under Section 102 of the CGST Act, 2017. There is no provision under CGST Act, 2017, which provides the Applicant to file any more application, seeking the call-back, or the vacation, of the earlier MAAAR Orders dated 22.03.2019 & 11.12.2019 and restoration of its earlier Application dated 21.08.2019 filed for the rectification of the original Order dated 22.03.2019, which had already been heard and decided by this Appellate Authority vide its Order dated 11.12.2019.
22. Moreover, on perusal of the Chapter XVII of the CGST Act, 2017, pertaining to the Advance Ruling, it is seen that there is no statutory provision for admitting such miscellaneous application, whereby it is sought to restore the earlier rectification application for the purpose of re-hearing.
23. As regards the Hon'ble Kerala High Court Order dated 03.02.2020 in the case of the *Sutherland Mortgage Services Inc. (Supra)*, relied upon by the Applicant, to underpin his argument that the said MAAAR Orders dated 22.03.2019 & 11.12.2019 suffer from the error of the law as the Hon'ble High Kerala High Court has opined that the GST law mandates the Advance Ruling Authority to decide upon the issue of the "place of supply" in order to determine the liability to pay tax on any goods or services or both, as provided under Section 97(2)(e) of the CGST Act, 2017, it is stated that the aforesaid judgment of the Hon'ble Kerala High Court was not pronounced, and therefore was not available for the consideration of the Appellate Authority at the time of the hearing of the rectification application dated 21.08.2019 or at the time of the issuance of the MAAAR Order dated 11.12.2019. Hence, it cannot be said the said MAAAR Orders dated 22.03.2019 & 11.12.2019 were against the legal principles laid down by the



Constitutional Court. It is further observed that the Hon'ble Kerala High Court, in the aforesaid case, has pronounced its Ruling dated 03.02.2020, whereby it has been held that the Advance Ruling Authority has made an error by taking stand that they do not have jurisdiction to decide upon the issue regarding place of supply, while holding that the issue related to determination of "place of supply" would come under the ambit of the Section 97(2)(e) of the CGST Act, 2017, for the determination of the liability to pay tax on any goods or services or both, **by going through a process of reasoning, which is quite apparent from the said Order.** Therefore, the error, pointed out by the Applicant in the impugned Orders dated 22.03.2019 & 11.12.2019, is not apparent on the face of the record, which would invite invocation of provisions of Section 102 of the CGST Act, 2017. The said view also finds support from the Hon'ble Supreme Court Judgment in the case of *Parsion Devi and Others vs. Sumitri Devi and Others* [1997 (8) SCC 715], wherein the Hon'ble Court has observed as under: -

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"."

24. Thus, it can decisively be inferred from the aforesaid ruling of the Hon'ble Supreme Court that the MAAAR Orders dated 22.03.2019 & 11.12.2019, which were passed by the Learned Members of the erstwhile Appellate Authority (MAAAR), even if erroneous, cannot be reheard and corrected by the present Appellate Authority.
25. As regards the supplementary submissions filed by the Applicant on 16.12.2020, wherein it was stated that the Department has accepted the ruling pronounced by the Hon'ble Kerala High Court on 03.02.2020, in the case of *Sutherland Mortgage Services Inc.*, it is stated that it has no bearing upon the outcome of the instant application filed by the Applicant.



26. In view of the above discussions and findings, we pass the following Order:

ORDER

27. We, hereby, reject the Miscellaneous Application dated 25.09.2020 filed by the Applicant i.e. M/s. Micro Instrument, 15, Shri Kripa Ramakrishna Society, Ram Mandir Road, Kherwadi, Bandra (East), Mumbai- 400051, to restore their Application dated 21.08.2019 seeking Rectification of Mistake in the MAAAR Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019, as the same has already been decided by the erstwhile Appellate Authority vide Order No. MAH/AAAR/SS-RJ/26A/2018-19 dated 11.12.2019, and therefore, the Miscellaneous Application dated 25.09.2020 filed by the Applicant is not legally maintainable, and hence the same is liable to be rejected and we order accordingly.

Sanjeev Kumar
(SANJEEV KUMAR)
MEMBER 24/12/2020



Rakesh Kumar Sharma
(RAKESH KUMAR SHARMA)
MEMBER

Copy to the:

1. Appellant;
2. Respondent;
3. AAR, Maharashtra;
4. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone;
5. Commissioner of State Tax, Maharashtra;
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN;