

C/647

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

Vikrikar Bhavan, Old High Court Building, Panaji, Goa, Pin Code 403001.

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

ORDER NO. GOA/AAAR/ 02

/2019-20/ 3071

Date: 3.11.2020

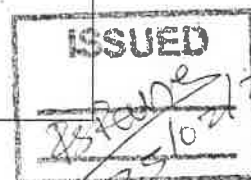
BEFORE THE BENCH OF

Shri Dipak M. Bandekar, Member

and

Shri Vasa Seshagiri Rao, Member

GSTIN Number	30AAACZ0348M1ZE
Legal Name of Appellant	M/s Syngenta Biosciences Private Limited,
Registered Address	Santa Monica Works, Ilhas, Corlim, North Goa- 403110
Details of appeal	Appeal No. GOA/GST/AAAR/02/2019-20 Dated: 27.09.2019
Appeal against	Advance Ruling No. GOA/GAAR/09 of 2018-19/1456 dated 29.08.2019
Jurisdictional Officer	State – STO Panaji Center – Range II



PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Goa Goods and Services Tax Act, 2017)

* * * * *

Unless mention is specifically made, a reference to provisions under Central Goods and Services Tax Act, 2017 would also be a corresponding reference to the same provisions under Goa Goods and Services Tax Act, 2017.

1. The present appeal has been filed under Section 100(1) of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017 (hereinafter commonly referred to as GST Act) by M/s Syngenta Biosciences Private Limited, Santa Monica Works, Ilhas, Corlim, North Goa- 403110, **GSTIN 30AAACZ0348M1ZE** against the Advance Ruling No. GOA/GAAR/9 of 2018-19/1456 dated 29/08/2019 passed by the Authority for Advance Ruling under GST, Goa State ("AAR" / "lower authority").

C/645

Brief facts of the case:

2.1. M/s Syngenta Biosciences Private Limited, Santa Monica Works, Ilhas, Corlim, North Goa- 403110 ("the Appellant" / "M/s. Syngenta/M/s.SBPL", in short) having GSTIN 30AAACZ0348M1ZE filed an application under Section 97 of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as the SGST Act) and the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) seeking an Advance Ruling in respect of the following questions:

- (i) Whether the activity of technical testing services carried out by the appellant be treated as 'zero rated supply'.
- (ii) If the answer to the aforesaid question is negative, then is the appellant liable to pay IGST on the said 'supply'.

2.2. After going through the provisions of the IGST Act, 2017, CGST Act, 2017 and SGST Act, 2017, the Goa Authority for Advance Ruling vide its Advance Ruling No. GOA/GAAR/09 of 2018-19/1456 dated 29/08/2019 gave the Advance Ruling as under:

- (i) The service provided by the appellant does not fall within the definition of export of service as defined under Section 2(6) of the IGST Act, 2017.
- (ii) The applicant is liable to pay CGST and SGST on the aforesaid supply of service.

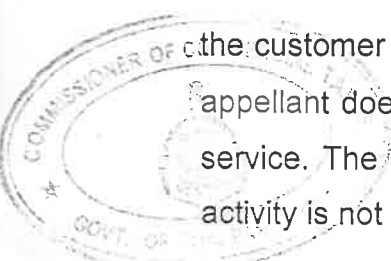
Grounds of Appeal

3. Aggrieved by the aforesaid Advance Ruling ("AR" / "impugned ruling"), the appellant filed the present appeal before this Appellate Authority for Advance Ruling for GST, Goa. In their grounds of appeal, the appellant *inter-alia*, submitted the following:

4. That the impugned order was non-speaking in nature. The AAR has not appreciated the submissions of the appellant. The AAR has nowhere given any rationale for concluding that the activity does not qualify as export and that the transaction is intra-state supply and not an inter-state supply.

5. That the activity carried out by them qualifies as research and development (R&D) activity. They receive the samples from overseas companies and / or the other facilities on which the research is carried out. Post the completion of testing, the goods either cease to exist or do not remain in the form in which they were handed over to them. The recipient of service is concerned only with the test report. Once it is concluded that the nature of their service is nothing but R&D service then the place of supply would be outside India.

6. That the appellant carries out testing activity in India and shares the test report with the customer located outside India. Even if it is assumed that the activity carried out by the appellant does not qualify as R&D service, the same would have to be treated as testing service. The ultimate deliverable of service is the provision of the test report. So, if their activity is not treated as R&D service, their activity would be treated as testing service.



4643

7. That the place of supply in their case would be outside India in view of the provisions of Section 13 of the IGST Act even if the nature of the services is either R&D or mere testing services. The place of supply will be the location of the service recipient.

8. Even if it is held that the activity in question would not amount to zero rated supply, then it would be treated as 'inter-state supply' and not 'intra-state supply'. They submitted that applying the provisions of Section 13 of the IGST Act read with Section 7(5)(c), the transaction in question would be 'inter-state supply' and therefore it would attract the applicable IGST only.

9. The appellant prayed to set aside the impugned order and to pass an order as may be deemed fit.

10. Personal Hearing was fixed on 20/12/2019. But the appellant failed to avail the opportunity on the said date. Again, the personal hearing was fixed on 17.01.2020. The authorized representatives of the appellant attended the hearing on behalf of the appellant and submitted their written contentions and sought relief as stated therein.

Discussion and Findings:

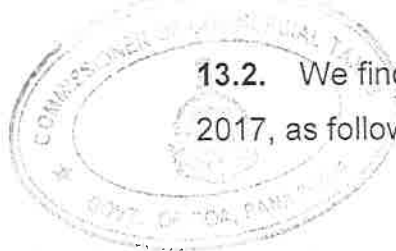
11. We have carefully gone through the material on record including the facts involved, relevant statutory provisions and the appellant's grounds/submissions including case laws cited by them.

12. The short issues for determination in this appeal are:

- (i) Whether the activity of technical testing services carried out by the appellant be treated as 'zero rated supply' of services in accordance with the provisions of Section 16 of the IGST Act, 2017, as claimed by the appellant or whether the same does not amount to 'zero rated supply' / 'export of services', as held by the lower Authority ?
- (ii) Whether the appellant is liable to pay IGST on the said 'supply of services' as claimed by them or they are liable to pay the applicable CGST + SGST as ruled by the lower Authority ?

13.1. With regard to the first issue, it is seen that appellant's query No.1 i.e., whether their activity of technical testing services carried out on samples/goods made available by service recipients are to be treated as 'zero rated supply of services' in terms of Section 16 of the IGST Act, 2017, has been answered by the lower Authority in the negative i.e., that these do not constitute 'zero-rated supply of services' i.e., export of services in terms of the said Section 16.

13.2. We find that the phrase 'zero rated supply' is defined in Section 16 of the IGST Act, 2017, as follows:



“SECTION 16. Zero rated supply. — (1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

- (a) export of goods or services or both; or**
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit...”.**

The phrase “export of services” appearing in the above text is defined in Section 2(6) of the IGST Act, 2017, as follows:

“SECTION 2. Definitions. — In this Act, unless the context otherwise requires, -

- (6) “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) 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]; 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;**

The phrase “place of supply of services” appearing in the above text vide (2(6)(iii)) merited determination under the provisions of Section 13 of the IGST Act, 2017 since admittedly, in this case the location of recipient is outside India. The relevant portion of the said Section 13 reads as follows:

SECTION 13. 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 :**

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

- (3) The place of supply of the following services shall be the location where the services are actually performed, namely :-**

- (a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services :**

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services :

[Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;]

....

13.2. We find that the lower authority has duly considered and analysed the above definitions and statutory provisions and found that though the appellant satisfies the conditions (i), (ii), (iv) and (v) of the definition of ‘export of services’ vide Sec.2 (6) *ibid.*, however the condition vide (iii) is not fulfilled by them. The Authority held that in terms of

Section 13 (3) the place of supply of service is in Goa, India, since in the given factual situation, the samples/goods on which the testing service is to be performed by the appellant were made available by the service recipients, which squarely fits into the situation specified under the said Section 13 (3) only. Consequently, the 'place of supply of services' has to be the location where the services are actually performed, which again admittedly is in Goa. And therefore that the services do not fall within 'export of services' vide Sec. 2(6) of the IGST Act, 2017.

13.3. As against such considered finding in the Advance Ruling, we find that appellant except for contending that the impugned ruling was non-speaking in nature and that the AAR has not appreciated their submissions etc., have not provided any substantial and legally tenable grounds/contentions to show any flaw or defect in the lower Authority's findings and ruling. The appellant laid much emphasis on the aspect that service recipient located abroad is concerned only with the Test-report, which is the ultimate deliverable of the service and hence, the place of supply has to be location of the service-recipient.

13.4. We do not find any merit or substance in the above contentions. The statutory provisions vide Section 13 of the IGST Act, 2017 are very clearly worded. That is, sub-Section (2) states that place of supply of services, except the services specified in sub-Sections (3) to (13) shall be the location of the recipient of services. Sub-Section (3)(a) is specific with regard to 'services supplied in respect of goods which are required to be made physically available by the recipient to the supplier... in order to provide the services'. The appellant has not disputed the applicability of the said sub-Section (3)(a) to their transactions, in any manner. They have not disputed that the 'services in respect of the goods provided by the recipient' are actually performed in India i.e., Goa. The outcome of the services being reports which are sent to the recipient abroad or that the service recipient is concerned only with the test-report, can have no bearing or relevance, once the statutory provision is clearly, plainly and unambiguously worded, as above and it is impermissible to expand the laid down criterion or to interpolate and insert words/phrases which are not used in such provisions.

14.1. The Hon'ble Supreme Court in the case of Commissioner of Cus. (Import), Mumbai Versus Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)] held that

Interpretation of statutes - Statute must be construed according to the intention of Legislature Interpretation of statutes - Words in a statute when clear, plain and unambiguous and only one meaning can be inferred, Courts bound to give effect to the said meaning irrespective of consequences.

14.2. The Hon'ble Supreme Court (Larger Bench) in the case of Union of India V/s M/s Dharmendra Textile Processors cited at 2008 (231) E.L.T. 3 (S.C.) held that

Interpretation of statutes A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

15.1. The appellant cited certain case-laws with regard to the delivery of report to foreign customer being part-performance of services outside India; which were all rendered in the context of the earlier levy of Service Tax under Finance Act, 1994 read with Export of

C/637

service Rules, 2005 and the specific wording therein. We find that the said case-laws were rendered in distinguishable set of facts & circumstances as well as the applicable statutory provisions; and hence the same cannot have applicability herein, especially in view of the specific, plain and unambiguous wording in the GST-statute, supra.

15.2. As the catena of decisions relied upon by the appellant relate to the service tax regime, it does not find statutory support in the GST era. The ratio of the said decisions does not apply to the factual matrix of the extant GST statute. Hence, the same do not support the case of the appellant.

16. As regards the second issue involved i.e., whether appellant is liable to pay IGST on the aforesaid supply of services, we find that since the supplier of service is in Goa, India and place of supply of service as determined under Section 13(3)(a) of the CGST Act, 2017 is also in Goa, India, the same falls under "Intra-State" supply of services as per Section 8(2) of the IGST Act, 2017 whereby the provisions under Section 7(5)(c) claimed by the appellant would not be applicable. Consequently, the appellant is liable to pay CGST and SGST on the aforesaid supply of service, as held by the lower authority.


17. The decision of the AAR Goa in the present case is consistent with and based on a fair, proper interpretation of the extend statutory provisions, supra and hence requires to be maintained as legal and proper.

18. In view of the above discussion and findings, this Appellate Authority passes the following order:-


ORDER

(Under Section 101(1) of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017).

For the reasons as discussed above, the Ruling given by AAR, Goa is maintained. The appeal filed by the appellant is rejected.


Dipak M Bandekar
Member




Vasa Seshagiri Rao 3 II 2020
Member

To:

**M/s Syngenta Biosciences Private Limited, Santa Monica Works, Ilhas, Corlim, North Goa- 403110
(GSTIN No. 30AAACZ0348M1ZE).**

Copy to:

1. The Goa State Authority for Advance Ruling, GST, Goa.
2. The jurisdictional Officer of Central Tax, Goa.
3. The jurisdictional Officer of State Tax, Goa.

