

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF
THE GOODS AND SERVICES TAX ACT, 2017**

Members present are:

Shri. R.Gopalsamy, I.R.S., Additional Commissioner/Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.
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Advance Ruling No. 12/AAR/2023 Dated: 06.06.2023

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

2. In terms of section 103 (1) of the act, this Advance ruling pronounced by the Authority under chapter XVII of the act shall be binding only –

a) On the applicant who had sort it in respect of any matter referred to in sub section 2 of Section 97 for Advance Ruling.

b) On the concerned officer or the Jurisdictional Officer in respect of the Applicant.

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

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

5. The provisions of the both the Central Goods and Services Act and Tamilnadu Goods and Services Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a

reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.

GSTIN Number, if any / User id		33AAECL3474C1ZU
Legal Name of Applicant		M/s. Luksha Consulting Private Limited
Registered Address / Address provided while obtaining user id		124A, Palakkaran Thottam, Mottur, Edangan Salai, Elampillai, Salem, Tamilnadu -637 502.
Details of Application		Form GST ARA – 01 Application Sl.No.42/2022/ARA dated 01.08.2022
Concerned Officer		Centre: Salem Commissionerate State: Sankari Assessment circle, Salem Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Information technology (IT) design and development services
B	Description (in brief)	
Issue/s on which advance ruling required		Determination of the liability to pay tax
Question(s) on which advance ruling is required		The team in India will monitor the customer applications running in UK and provide any fix or update required in case of issues. Is GST applicable for monitoring the software application contract outside India? Contract amount will be receivable in UK currency only. Whether IGST is applicable for the above export online monitoring software contract work and if applicable rate of GST.

M/s. Luksha Consulting Private Limited, Elampillai, Salem (herein after referred to as 'The Applicant'), with GSTIN 33AAECL3474C1ZU have filed an application for Advance Ruling under section 97 of GST Acts read with Rule 104 of GST Rules, 2017, in Form ARA-01 paying the prescribed fees of Rs. 5000/- each under the CGST and TNGST Act,2017.

2. The Applicant has stated that they are primarily engaged in providing information technology enabled services such as enhancing / fixing programs in SAP and Microsoft products and also providing services to create reports and insight using tools like SAP business warehouse, Data sphere, SAC, Power BI. They have also stated that they do not develop full products or support data Centre activities.

3. The Applicant has sought Advance Ruling on the following:

The team in India will monitor the customer applications running in UK and provide any fix or update required in case of issues. Contract amount will be receivable in UK currency only. Whether IGST is applicable for the above export online monitoring software contract work and if applicable rate of GST.

4.1. The Applicant is a Private Limited Company incorporated in India under the Companies Act, 2013. They have been awarded Projects by M/s. Luksha Limited, UK and M/s. Spovens Limited, UK to provide the following services;

A. M/s. Luksha Limited, UK:

- Development of Functionalities and Dashboards based on the SAP Application. Delivery of specific features by usage of the BW, DWC, SAC and analysis for Office.
- Technical advice on feasibilities based on the SAP solution.
- Supporting Team Members to proper plan the Sprints and support for keeping the committed scope and timelines.
- Proper Testing of the deliveries ensuring high quality and less incidents within the productive Environment.
- Following Guidelines on documentation, testing and transportation of technical developments.
- Full compliance to any Quality Assurance Guidelines.
- Strong communication towards the Project Manager and/ or technical Product Owner.
- Introducing best practices for helping to increase organizational effectiveness.

B. M/s. Spovens Limited, UK: Consulting Services for monitoring / changing/ fixing SAP objects.

4.2. In view of the above contracts/ projects, the Applicant wants to know whether the service rendered by them to the foreign clients would qualify export of service under the provisions of GST Act or not.

Personal hearing

5.1. The applicant, after consent, was given an opportunity to be virtually heard on 15.03.2023. The Authorized Representative (AR) of the applicant Sri.N. Sakthiraj, appeared before the authority and reiterated the submissions.

5.2. The AR has been asked to furnish the following details/ documents;

- Incorporation certificate of the foreign entity viz., M/s. Luksha Limited, UK.
- Agreement between foreign entity and its customer
- Copy invoice issued by the Applicant to foreign entity
- Detailed write up on the nature of service associated with monitoring of customer applications running (like software, machinery, etc.,) in UK, as mentioned in the AR application.

5.3. Subsequently, the applicant has submitted the following documents:

- Certification of incorporation of a Private Limited Company of Luksha Limited issued by the Registrar of Companies for England and Wales.
- VAT certificate issued to Luksha Limited in UK
- Copy of the agreement dated 10.01.2022 between Luksha Limited, UK and Luksha Consulting P. Ltd, India
- General Service Agreement between Spovens Limited, UK and Luksha Consulting P. Ltd, India
- Copy of invoice No.INV-000001 dated 30.03.2022 issued by Luksha Consulting P. Ltd, India to Luksha Limited, UK.

6.1. The Applicant is assigned to State jurisdiction. The State jurisdictional authority, the Assistant Commissioner (ST), Sankari Assessment Circle has reported that, on physical verification of the place of business, it is found that M/s. Luksha Consulting Pvt Limited is functioning with two employees in the address mentioned in the application filed by the applicant. So far, they have reported only one transaction in the returns filed for the month of March 2022 and made tax payment of Rs.15239/-

6.2. The Joint Commissioner, Salem Commissionerate has reported that there are no pending proceedings in the applicant's case in their jurisdiction on the issue raised by the applicant in the ARA application.

Discussions and Findings

7.1. We have carefully examined the statement of facts, supporting documents filed by the Applicant and the additional submissions made during the hearing and the issue to be discussed in the instant case is the taxability of the services rendered by the Applicant based on the details and documents furnished.

7.2. Based on the facts presented, it is seen that the applicant is supplying Information technology enabled services to a company located outside India, on his own. Prima facie, the services rendered by the applicant appears to be falling under export of services.

7.3. In this connection, it is observed that, Export of services as defined under section 2(6) of the IGST Act, 2017 essentially involves determination of place of supply which is not included as a question under section 97(2) of the CGST& TNGST Act, 2017 on which Advance Ruling can be sought. However, this case is admitted based on the following observations made by the Hon'ble High Court of Kerala in Writ Petition (Civil) No. 32634 of 2019, challenging the decision of the Advance Ruling Authority, Kerala in a similar issue;

“ A reading of clauses (a) to (g) of sub-section (2) of Section 97 of the CGST Act would make it clear that 7 items are enumerated as per clauses (a) to (g) of sub section (2) of Section 97 and all those clauses other than clause (e) thereof, are in specific terms. Whereas clause (e) of sub-section (2) of Section 97 of the CGST Act clearly mandates that the larger issue of “determination of liability to pay tax on any goods or services or both” would also come within the ambit of the questions to be raised and decided by the Advance Ruling Authority on which advance ruling could be sought and rendered under the said provisions. Whereas Clauses (a), (b), (c), (d), (f) & (g), i.e. the clauses other than clause (e), are in specific “pigeon holes” the provision as per clause (e) of sub-section (2) of Section 97 is in wide terms and the Parliament has clearly mandated that the latter issue of determination of liability to pay tax on any goods or services or both, should also be matters on which the applicant concerned could seek

advance ruling from the Advance Ruling Authority on which the said authority is obliged to render answers thereto. The Parliament has made the said provision envisaging that in transactions in nature, where India is now a growing economy and has to make its substantial performance in economic growth and development not only domestic investments, but even foreign investments would also be heavily required and that host of tax laws has been subsumed into the overarching umbrella of the goods and services tax regime introduced by the Parliament and the parliament would have certainly taken cognizance of the fact and has intended that very often applications would require clearly and precision about various aspects of taxation in the transactions and that there should be certainty and precision in those matters, so that the applicant concerned is given the right to seek advance ruling even in such a larger issue as the one as per clause (e) of Section 97 (2) of the CGST Act, which deals with issue of determination of liability to pay tax on any goods or services or both.

In cases of this nature, entities which come with foreign investment in India would also require certainty and precision about the tax liability so that they can plan and decide in advance about their functioning as business entities in India so that its efficacy is maximised so as to bring in a "win win situation" not only for such foreign entities, who are permitted to make such investments in India, but also for the economy of India. It is in the light of these dynamic scenario in the fast changing global economy that the Parliament has taken a very proactive role with a very wide vision, the parliament in its wisdom has decided to mandate such a provision as in clause (e) of Section 97 (2), whereby the applicant is empowered to seek advance ruling even on the said larger issue of determination of liability to pay tax on goods or services or both and in view of such a scenario, the Advance Ruling Authority is obliged to entertain such plea and consider it on merits and then render its opinion/ answer to such a plea that may be raised and to render its advance ruling on those aspects in accordance with the provisions contained in the above said Acts.

In the instant case, it is true that the issue relating to determination of place of supply as afore stated is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 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 fulfills the definition of place of service, would also come within the ambit of the larger issue of “determination of liability to pay tax on any goods or services or both” as envisaged in clause (e) of Section 97 (2) of the CGST Act. The Advance Ruling Authority has proceeded on a tangent and has missed the said crucial aspect of the matter and has taken a very hyper technical view that it does not have jurisdiction for the simple reason that the said issue is not expressly enumerated in Section 97 (2) of the Act. This Court has no hesitation to hold that the said view taken of the Advance Ruling Authority is legally wrong and faulty and therefore the matter requires interdiction in judicial review in the instant writ proceedings. In that view of the matter, it is ordered that the above said view taken by the Advance Ruling Authority is legally wrong and faulty and is liable to be quashed and accordingly declared and ordered.”

Thus, this case is admitted based on the above observations made by the Hon’ble High Court of Kerala cited supra. Now it is imperative to analyze whether the said transactions satisfy the conditions stipulated under section 2(6) of IGST Act, 2017 to qualify it as export of service.

7.4.1. The export of services has been defined in subsection (6) of the section 2 of the IGST Act, 2017 as extracted below;

“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; 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;*

Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;*
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*

7.4.2. As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

7.4.3. Further, Ministry of Finance has issued clarification relating to export of services in Circular No.161/17/2021, dated 20.09.2021 and the relevant paragraphs are extracted as below;

Analysis of the issue:

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a

branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of "person" under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

Clarification:

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".

5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

7.4.4. On perusal of the incorporation certificate submitted by the applicant, it is seen that the Applicant M/s. Luksha Consulting Private Limited are incorporated in India under the Companies Act, 2013 with Shri V. Natarajan as Director and the establishment at UK, M/s. Luksha Limited has been incorporated as a Private Limited Company with the Registrar of companies for England and Wales, with Mr. Sakthiraj Natarajan as the Director of the Company. Thus, it is evident that M/s. Luksha Consulting Private Limited in India and M/s. Luksha Limited, UK are not considered as establishments of distinct person as the directors of both the establishments are different persons, as evident from the certificate of incorporation furnished by the applicant.

7.5. The Applicant M/s. Luksha Consulting Private Limited has entered into an agreement with M/s. Luksha Limited, UK and Spovens Limited UK and submitted copy of the agreement. The Applicant has also stated that they have potential business with M/s. Exigo solution, Stockport.

7.6. In this context, it is imperative to ascertain whether the services rendered by M/s. Luksha Consulting Private Limited as per the agreement satisfies the conditions prescribed under Section 2(6) of the IGST Act, 2017;


Conditions	Remarks
(i) the supplier of service is located in India	The supplier of service M/s. Luksha Consulting Private Limited is located in India.
(ii) the recipient of service is located outside India;	The recipient M/s. Luksha Limited, UK is located outside India.
(iii) the place of supply of service is outside India;	In terms of Section 13(2) of the IGST Act, the place of supply of services except the services specified in subsections (3) to (13) shall be the location of the recipient of services. In the case of Applicant, as the recipients of service are located outside India, 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; and	As seen from the terms of agreement and copy of invoice furnished by the Applicant, payment has been received in Great Britain Pounds.
(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 supplier of service is incorporated in India under the Companies Act and the recipient of service is incorporated under the Companies Act, UK.

7.7. Thus, it is clear that the supply of information technology enabled services rendered by the applicant to the recipient qualifies to fall under export of services on fulfilling the conditions specified under section 2(6) of the IGST Act, 2017, which in turn is considered as a zero rated supply in terms of section 16 (1)(a) of the IGST Act, 2017.

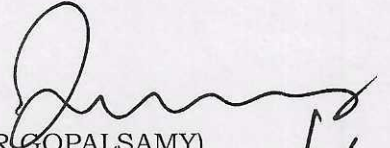
In view of the above discussions, we rule as under;

RULING

The supply of information technology enabled services rendered by the applicant to the recipient qualifies to fall under export of services on fulfilling the conditions specified under section 2(6) of the IGST Act, 2017, which in turn is considered as a zero rated supply in terms of section 16 (1)(a) of the IGST Act, 2017.


(N. USHA)
Member (SGST) 6.6.2023




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

To

M/s. Luksha Consulting Private Limited,
124A, Palakkaran Thottam,
Mottur, Edangan Salai,
Elampillai, Salem,
Tamilnadu -637 502.

// By SPAD//

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Salem Commissionerate.
4. The Assistant Commissioner (ST),
Sankari Assessment Circle,
RDO Office Compound,
Tiruchengode Road, Sankari – 637 301.
5. Master File / spare – 1.