

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADMISSION ORDER NO. GUJ/GAAR/ADM/2018/34
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/35)

Date : 30.8.2018

Name and address of the applicant	:	M/s. Lambda Therapeutic Research Limited 'Lambda House', Plot No. 38, Survey No. 388, S.G. Highway, Gota, Ahmedabad – 382 481.
GSTIN of the applicant	:	24AAACL4089R1ZX
Date of application	:	1.1.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both; (e) determination of the liability to pay tax on any goods or services or both; (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	05.04.2018
Present for the applicant	:	Shri Jigar Shah (M/s. Lakshmikumaran & Sridharan)

The applicant M/s. Lambda Therapeutic Research Limited has filed application for advance ruling for determination of 'place of supply' while providing services of scientific testing and technical analysis on pharmaceutical products.

2. The applicant submitted that the company is a global clinical research organization and *inter-alia* engaged in conducting bio-availability and bioequivalence and clinical trials for various pharmaceutical companies located in and outside India. In the process of providing the above services, the applicant provides scientific testing and technical analysis on pharmaceutical products and other incidental research and development in the pharmaceutical sector. For providing these services, samples of pharmaceutical products are made available to the applicant from an entity situated outside India and the applicant conducts clinical trials on the product for ensuring the scientific correctness of the products and during the process, the products as provided by the entities situated outside India are consumed. In other words, the products are utilized for preparing the report on the efficacy of the same are not returned back to the entity

which had sent them for testing. Applicant receives the consideration in convertible foreign exchange for providing these services.

3. The applicant has requested for determination as to whether the activities provided by the applicant will be treated as 'export of service' under the provision of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017') and will consequently fall under 'zero rated supply' as per Section 16 of the IGST Act, 2017.

4. The applicant referred to Section 2(6), 13 and 16 of the IGST Act, 2017 and Rule 4 of the Place of Provision of Service Rules, 2012 (erstwhile). The applicant also referred to decisions in the cases of CCE, Pune-I vs. Sai Life Sciences Ltd. [2016 (2) TMI 724] and Principal Commissioner of Central Excise, Pune-I Vs. Advinus Therapeutics Ltd. [2016 (12) TMI 34]

5. The personal hearing for admission of the said application for advance ruling was fixed on 18.01.2018, however, on the request of the applicant, the adjournment was granted. During the personal hearing held on 05.02.2018, authorized representative wanted to amend the application qua formation of question and wanted to convince this authority on the issue of jurisdiction, which request was acceded to.

6. The applicant, vide letter received on 27.02.2018 submitted the revised application, wherein the following question has been raised for advance ruling –

“Whether the activity of the applicant provided to foreign clients in the nature of scientific testing and technical analysis on pharmaceutical products will be treated as 'export of service' under the provisions of IGST Act, 2017?”

7. The personal hearing for admission of the said application for advance ruling was again held on 21.03.2018, wherein the authorized representative of the applicant again sought permission to put up a submission as to how this authority is having jurisdiction to decide 'Place of Supply' under Section 97, which is one of the condition to be fulfilled for ascertaining export of service.

8.1 The applicant submitted further written submission dated 28.03.2018 with regard to the jurisdiction of this authority in hearing the present application seeking a ruling on whether the activity of the applicant is taxable and amounts to 'export of service' consequently falling under the 'zero rated supply' under the provisions of IGST Act, 2017. The applicant referred to Section 97(2)(e) and submitted that the said provision makes it clear that in cases pertaining to determination of liability to pay tax on any goods or services or both, the advance ruling authority shall have the jurisdiction to hear the matter. The applicant also referred to clauses (i), (ix), (xvii) and (xviii) of Section 20 of the IGST Act, 2017 and submitted that in matters pertaining to liability to pay tax in certain cases, provisions of CGST Act shall apply and the jurisdiction of this authority to entertain the present application seeking advance ruling shall be determined by Section 97 of the CGST Act. Therefore, the provisions of IGST Act, 2017 itself enable the applicant to file the application for advance ruling.

8.2 The applicant further submitted that on a careful reading of Section 97(2) of CGST Act, it can be observed that the issues covered therein are overlapping and are also

wide enough to cover various issues under its ambit. To elaborate, Section 97(2)(e) covers determination of liability to pay tax on any goods or services or both which will include classification of any goods or services or both, applicability of notification issued under the provisions of the Act etc., which are all envisaged in Section 97(2) vide clauses (a) and (b) therein. It is submitted that the determination of liability to pay tax on goods or services is based on various factors such as whether the taxable event has occurred, whether the services fall under the category of reverse charge mechanism, who is liable to pay the tax, whether the activity falls under export of service or not etc. and for such determination, various incidental questions might require consideration of the Hon'ble Court, Tribunal or the Authority vested to exercise such jurisdiction.

8.3 The applicant referred to definition of 'export of service' as defined under Section 2(6) of the IGST Act, 2017 and 'zero rated supply' defined under Section 16 of the IGST Act, 2017 and submitted that while determining the applicant's liability to pay tax, incidental questions as to whether the activity falls under export of service requires to be answered which will in turn depend upon whether it is export of service or not. In other words, the advance ruling is sought to determine the taxability itself and it is in the course of that determination, the ancillary issues are required to be dealt with. It is submitted that in respect of determination of liability to pay tax on any goods or services or both, the applicant is eligible to seek an advance ruling.

8.4 The applicant submitted that in the present case, the applicant satisfies the criterion required for filing the application for advance ruling and therefore, this authority possesses the jurisdiction to hear the application filed by the applicant.

9. On the personal hearing held on 05.04.2018, the authorized representative of the applicant reiterated the submissions already made and submitted that he has nothing more to submit on the issue of jurisdiction of this authority to decide this application.

10. The applicant, vide letter dated 20.04.2018, submitted that in the order passed by the Authority for Advance Ruling, Delhi in the case of Rod Retail Pvt. Ltd., the issue related to export of service has also been considered and requested to admit the application for advance ruling.

11. We have considered the submissions made by the applicant in application for advance ruling, revised application for advance ruling, written submissions as well as during the course of personal hearing.

12. Section 97(2) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017') empowers the Advance Ruling Authority to decide the issues, which are as follows :-

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

No other issue can be decided by the Advance Ruling Authority and therefore the Acts limit the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2).

13.1 The issue whether the activity of the applicant provided to foreign clients towards scientific testing and technical analysis services on pharmaceutical products which are supplied by an entity situated outside India would be treated as 'export of service' under the provisions of the IGST Act can be determined in light of various provisions of the IGST Act, 2017 including Section 2(6) which defines 'export of services'.

13.2 The definition of "export of services" as per Section 2(6) of IGST Act, 2017 is as follows :-

"2(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; 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;"*

Thus, one of the important requirements of supply of any service to be treated as 'export of service' is that the place of supply of service is outside India.

13.3 The provisions for determination of place of supply of services where the location of the supplier or the location of the recipient of services is outside India are contained in Section 13 of the IGST Act, 2017. Section 16 of the IGST Act, 2017 provides that '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.*

13.4 Thus, the entire issue is intrinsically related to determination of 'place of supply' of service by the applicant.

13.5 The applicant has filed application for advance ruling for determination of 'place of supply' while providing services of scientific testing and technical analysis on pharmaceutical products. Thus, the applicant is well aware that the issue is related to 'place of supply'.

13.6 This authority has been constituted in exercise of the powers conferred by section 96 of the Gujarat Goods and Services Tax Act, 2017, which Act extends to the whole of the state of Gujarat. This authority is a creature of statute and has to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section

97(2) of the Acts, this authority is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issues. The jurisdiction of this authority does not extend to the questions on determination of 'place of supply'.

14. In the Advance Ruling dated 27.03.2018 of the Authority for Advance Ruling, New Delhi in case of M/s. Rod Retail Private Limited, there has been no discussion or decision as to whether the advance ruling authority has jurisdiction to decide the issue of 'place of supply'.

15. The application is therefore rejected without going into the merits of the case, on the issue of lack of jurisdiction, at the stage of admission.

ORDER

The application for Advance Ruling of M/s. Lambda Therapeutic Research Limited (GSTIN 24AAACL4089R1ZX) is rejected, under sub-section (2) of section 98 of the CGST Act, 2017 and the GGST Act, 2017.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date :30.8.2018.