


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/36/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/03)

Date: 30-07-2021

Name and address of the applicant	:	M/s. Maxpressure Systems LLP, 3 ,Mangal Apartments, Nr. Police Stadium, Shahibaug, Ahmedabad, Gujarat
GSTIN/ User Id of the applicant	:	24AAJFB9677K1ZU
Date of application	:	9-2-21
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) Classification of goods and/or services or both (e) determination of the liability to pay tax on any goods or services both
Date of Personal Hearing	:	30-6-21
Present for the applicant	:	Shri Nishant Shukla, Advocate.

Brief Facts:

The applicant, M/s. Maxpressure Systems LLP, submitted that it is an independent service provider who supplies marketing and sales promotion services to foreign vendors outside India. They do not have any agreement or contract with any of the foreign vendors but as and when the foreign vendors feel necessary, it may approach the applicant to avail its services.

2. The applicant provides service of conducting market survey, providing information on Indian market trends and/or marketing of products of foreign vendor in India but the same is done at applicant's own will without any agreement or obligations or undertaking or assurance of assistance in execution of any transactions further with the prospective buyer, if any.

3. The applicant submitted that they market the products of foreign vendor in India and provides list/details of prospective buyers in India to foreign vendor. The role of applicant ends at that stages. Thereafter if the customer is willing to buy the products of the respective foreign vendor then customer is required to directly approach the foreign vendor and applicant has no role to play. The foreign vendors neither consults applicant in relation to rates/prices of the products nor the applicant have any right to influence or assist either vendor or customer in closing the deal. It is at complete and sole discretion of the prospective buyer and foreign vendor whether to proceed with deal or not. The

applicant has no role to play either during the negotiation between the parties to close the deal or even after deal is closed. The applicant provides services on its own account as an independent service provider and raises invoice upon the foreign vendor upon completion of its services. The foreign vendor makes the payment to applicant in convertible foreign exchange.

4. The applicant has submitted that the service rendered by them are eligible to be classified as Zero rated supplies as Export of Services as it has provided pure service to an entity located in non-taxable territory i.e. outside India.

5. The applicant has referred the term “intermediary” defined under Section 2(13) of IGST Act. The definition of “intermediary” is read as under :

“(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;”

6. The applicant has submitted that from the definition of “intermediary” it can be observed that in order to fall under Intermediary services a person needs to facilitate the supply of goods or services between two persons i.e. buyer and seller. They neither facilitate the transaction nor arranges the transaction between buyer and seller and submitted that they provide services to foreign vendor on its own account as an independent entity. Therefore, they do not fall under the category of intermediary services. The applicant has referred the meaning of “Facilitate” and as per Cambridge Dictionary, “Facilitate” means “to help people deal with process or reach an agreement or solution without getting directly involved in the process, discussion, etc.”

7. The definition of “Intermediary Services” under the Pre-GST Regime and GST Regime is *pari materia* and thus, the understanding and explanation and interpretation of intermediary services under pre-GST regime is equally applicable under GST. The applicant has referred to and gain support from the para 5.9.6 of CBEC’s Education Guide dated 20.06.2012 which though released under the pre-GST regime, the framework and the intention of the Government would hold true even under the GST regime. The said Education guide while explaining the term “intermediary” clearly states that a person who arranges or facilitates a provision of a service, but provides the main service on his own account, is excluded from the scope of the term “intermediary”. The applicant has submitted that services are provided by them on his own account and they do not facilitate any supplies of goods or services.

7.1 The applicant has submitted that the Education Guide explains following in para 5.9.6 :

7.2 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 alteration 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 (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as “the main service”), but provides the main service on his own account.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary’s service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as “commission”.

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

7.3 The applicant has submitted that normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the “main service”

8. The applicant has further submitted that service provided by them do not fall under the criteria of “intermediary service” by any stretch of imagination. Even the interpretation and understanding given by CBEC in Education Guide supports the understanding of the applicant that services provided by the applicant cannot be considered as “intermediary services”.

9. The definition of “export of services” provided under section 2 (6) of the IGST Act reads 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;*

9.1 The applicant has submitted that they fulfill all the above conditions in order to be classified as “Export of Services”.

Condition I- Supplier of service is located in India

The applicant is registered under GST and providing the service from Ahmedabad, India. Hence fulfilling the first condition.

Condition-II- Recipient of service is located outside India

In the instant case the service recipient is not registered in India and therefore their registered place of business will be their registered address (i.e. outside India). Hence second condition is fulfilled.

Condition-III place of supply of Service is outside India

The service provided by the applicant is in nature of “Support Services” classifiable under HSN 9985. The place of supply in the instant case is required to be determined as per general rule i.e. Section 13(2) of IGST Act. The said sub section provides that the location of the recipient of services shall be the place of supply. In the present case the place of supply of Service is outside India as the place of recipient is outside India.

Condition-IV- Payment is received in convertible foreign currency

The applicant receives payment in freely convertible foreign exchange.

Condition-V- Supplier of Service and recipient of service are not merely establishment of distinct person.

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.*

In the instant case the service recipient is not an establishment formed by the applicant or applicant is not an establishment formed by service

recipient and consequently, it cannot be treated as an establishment of distinct person.

9.2 The applicant has submitted that it could be construed that the applicant fulfills all the condition for treating the supply of services as an export of services in terms of Section 2(6) of IGST Act.

10. The applicant has submitted that in view of the above provisions of law vis-à-vis facts of the case and interpretation above, it becomes amply clear that once the applicant moves out of purview of “intermediary Services”, there does not remain any service specified under Section 13(3) to 13(13) of IGST which includes the services of applicant and once it is established that section 13 (3) to 13(13) does not include services provided by the applicant then it falls under residuary clause i.e. 13(2). As per section 13(2) the place of supply would be the place of recipient of services and in the present case, the place of recipient of services is outside India as the service receiver is foreign vendor to whom the applicant has provided services and as a corollary the services provided by the applicant become eligible to be termed as Export of Service being classified as Zero Rated Supplies.

11. The applicant has submitted that by no stretch of imagination, services provided by them termed as “Intermediary Services” as they do not work as an intermediary who facilitates or arranges the transaction. They provide service on Principal to Principal basis on its own account and not under any agreement or obligation. At the most, their services can be termed as either “Market Research Services” or “Support Services” which in turn are eligible as Export of Services to be classified as Zero Rated Supplies.

12. The applicant has submitted that the question raised by the applicant in no manner relates to determination of “Place of Supply”. However, for the sake of argument and assuming without admitting that even if the question relates to place of supply, Honourable Advance Ruling Authority has jurisdiction to decide the same and it is not outside the purview of jurisdiction of Advance Ruling Authority. The applicant has placed reliance on the decision of Hon’ble Kerala High Court in the case of Sutherland Motgage Services Inc vs. The Principal Commissioner-WP(C) No. 32634/2019 (D) Dated 3-2-20.

13. The applicant has submitted that services provided by them are outside the purview of “Intermediary Services” and their service become eligible to be termed as Export of Services being classified as Zero Rated Supplies.

14. The applicant vide additional submission dated 5-7-21 has submitted that they provide services of conducting market survey, providing information on Indian market trends and/or marketing of products of foreign vendor in India but the same is done at applicant’s own will without any agreement or obligations or undertaking or assurance of assistance in execution of any transactions further with the prospective buyer, if any. The applicant

provides the brochure/details of the products of the foreign manufacturer/vendor to the industries in India and at the same time it provides market research analysis report along with potential buyers to the foreign vendor/manufacturer. The foreign vendor/manufacturer approaches the applicant through a phone call or email to inform about the Indian industry for which it may require services of applicant in relation to market research and analysis. The applicant carries out market research and the modes include internet and physical approach to the major manufacturers/vendors/dealers in that particular industry. Thereafter, the market research and analysis report is sent to foreign manufacturer/vendor alongwith list of potential buyers in Indian Market and invoice is raised in relation to such services of market research and analysis services.

14.1 The applicant submits that once the report is supplied to the foreign vendor, the role of applicant ends and thereafter, if the Indian Customer is willing to buy the products of the respective foreign vendor then customer is required to directly approach the foreign vendor and applicant has no role to play. The foreign vendor neither consults applicant in relation to rates/prices of the products nor the applicant has any right to influence or assist either vendor or customer in closing the deal and it is at complete and sole discretion of the prospective buyer and foreign vendor whether to proceed with deal or not. The applicant has no role to play either during the negotiations between the parties to close the deal or even after deal is closed. The applicant provides services on its own account as an independent service provider and raises invoice upon the foreign vendor upon completion of its services. The foreign vendor makes the payment to applicant in convertible foreign exchange.

14.2 The applicant further submits that there is no written or oral agreement between the foreign vendor and applicant. The foreign vendor is at liberty to approach any other service provider in relation to such services and at the same time it is open for applicant to deny to provide such services to foreign vendor. The entire services are provided on Principal to Principal basis and there is no relationship of Principal and Agent between applicant and foreign vendor either expressly or impliedly. The foreign vendor has reserved the right to decide and determine the fees/charges payable to the applicant in relation to the services provided by the applicant. The foreign vendor has issued a certificate declaring the nature of transactions with the applicant and also has certified and confirmed that there is no written agreement between the parties i.e. foreign vendor and applicant. It has also mentioned that discretion to determine quantum of fees remains with it. The said certificate along with a sample copy of market research and analysis report was submitted by the applicant during the course of hearing on 30-6-21. With this submission, the applicant has again

submitted the aforementioned certificate issued by foreign vendor i.e. **SITEC-Sieber Engineering AG, Switzerland**. The applicant has also submitted copies of 3 market research and analysis reports for perusal.

14.3 As per the applicant's understanding, it is not an intermediary who facilitates transactions between Indian buyer and Foreign vendor. It only provides services of market research and analysis along with list of potential buyers in Indian market, to the foreign vendor. Thus, as per understanding of the applicant it does not provide intermediary services. According to applicant, the services provided by it to foreign vendor falls under sub-section 2 of section 13 where place of supply is the place of service recipient and hence thereby the nature of services being export of services as the applicant fulfils all the conditions in relation to export of services which are zero rated supplies.

14.4 The applicant submits that in view of submissions made here as well as in original application for advance ruling, provisions of law and interpretation thereof vis-à-vis facts of the case of the applicant, it can be conveniently and undoubtedly said that by no stretch of imagination, services provided by the applicant be termed as "Intermediary Services" as applicant does not work as an intermediary who facilitates or arranges the transaction. It is clear that applicant provides services on principal to principal basis on its own account and not under any agreement or obligation. At the most, services provided by applicant can be termed as either "Market Research Services" or "Support Services" which in turn are eligible as export of services to be classified as zero rated supplies.

Advance Ruling sought on the following Questions:

1. Whether the service provided by the applicant is a zero Rated Supply or Normal Rated Supply under the GST Act?
2. If the services provided by applicant are Zero Rated Supplies then can the same be considered as Export of Services?

Personal Hearing

15. Shri Nishant Shukla, Advocate appeared on 30-6-21 and reiterated the contents of the application. On being asked, Shri Shukla reiterated that no contracts/agreements have been entered between the applicant and its foreign vendors/clients in respect of the subject services supplied by them.

FINDINGS

16. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the

CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

17. We have carefully considered all the submissions made by the applicant.

18. During personal hearing, on being enquired by the Authority, Shri Shukla submitted that the applicant is supplying Service to only one foreign vendor namely M/s. SITEC Sieber Engineering AG. We find that the applicant has submitted 3 sample market research and analysis reports (one report for year 2021, a second report for year 2018-19) all three reports to the SITEC.

19. To understand the scope of supply, the Agreement/ Contract entered into between the applicant and his service recipient is to be examined. However, the applicant during the course of hearing has submitted that Shri Philip Balaram was earlier an employee of the foreign vendor M/s. SITEC-Sieber Engineering Pvt. Ltd A.G. and that he has resigned from the company and started the applicant company M/s. Max Pressure System LLP, and there is no agreement/contract between the applicant and the service recipient. We note that this leaves us with nothing much to ponder, examine and deduce to arrive at a logical and legal pronouncement of Ruling. We are faced with a situation just to decide upon whatever the applicant submits. There is no Agreement to test the applicant's submissions. We hold that Agreement/ Contract, in subject matter, will be a cornerstone upon which we may test and examine the submissions made before us.

20. We note that during personal hearing, Shri Shukla submitted that to conduct said market survey in India for the product of foreign vendor, they first search the potential customers through internet and then they contact the Indian customers and visit the places of Indian Customers to collect the requisite data. For illustration, in one of the Market Analysis report for High Pressure Equipment in Indian Oil & Gas Industry for year 2018-19, the Market Research techniques used by the applicant includes, inter alia,

- i. Discussions with representatives of reputed multinational companies most notably Schlumberger, Halliburton, L&T hydrocarbon Ltd, Essar oil & Gas exploration etc.
- ii. Discussion with senior level management of state organizations ONGC, Gas Authority of India (GAIL) etc.

And in this report, the applicant forwarded list of potential buyers for the service recipient, the potential buyers, inter alia were: ONGC, Essar Oil & Gas/ Essar Offshore Exploration, Shlumberger Asia Services ltd.

For this report, the service recipient was required to pay CHF 25000 for service charges and customer interactions.

For another Market Survey Report for Application Monitoring and Component Use in Automotive Industry for year 2021, the applicant to arrive at it's report had discussions with Purchase offices of past

customers of SITEC product lines and discussions with Director level persons of eminent organizations. Further, the applicant supplied a list of six potential buyers of SITEC products in Indian market and mentioned that catalogues of SITEC products was supplied to 15 business establishments including aforementioned potential buyers. Further the service charges was raised for preparing this report and customer interactions by the applicant.

21. It is on record that the applicant had discussions with entrepreneurs as well as established manufacturers and supplied list of potential buyers to the service recipient. Without a copy of contract/Expression of Interest in this case, the scope of supply cannot be arrived at. We note that to exclude the supply from the scope of intermediary service, the applicant should supply such services on his own account. 'Intermediary' is defined at Section 2(13) of the IGST Act, as follows:“(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.

22. Prima facie, We note that the applicant **is a person who facilitates SITEC with the potential list of buyers** besides the market analyses. Further with the limited material data submitted by the applicant, with no Expression of Interest/ Contract/ Agreement, we find it prudent to refrain from pronouncing a Ruling.

23. Barring Self Assessment, the Assessment to tax is the function of Revenue. We shall not employ the concept of Best Judgement Assessment to pronounce our Ruling based on reasoning on limited information available, for without examination of relevant Agreement/ Contract, neither shall we trespass to declare subject supply taxable, if in legality it weren't, nor shall we declare it zero rated citing that applicant has noting contrary in his written submission sans Agreement/ Contract.

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member(C)