

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



ADVANCE RULING NO. GUJ/GAAR/R/41/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/13)

Date: 30.07.2020

Name and address of the applicant	:	M/s. Dharmshil Agencies, Ashirvad Paras, Corporate House No.3, Near Rivera Elegance, Prahlad nagar, Ahmedabad-380015.
GSTIN of the applicant	:	24AAEFD5653N1Z7.
Date of application	:	25.02.2019.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) determination of time and value of supply of goods or services or both; (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	09.07.2020(through Video Conferencing)
Present for the applicant	:	Shri Himanshu Kothari.

BRIEF FACTS

The applicant M/s. Dharmshil Agencies has submitted that they have entered into an agreement with Tsudokoma Corporation, Japan to sell their machinery and against the said services, they are receiving commission income from Japan in foreign currency.

2. The applicant has submitted that earlier under Service Tax Regime, they were paying service tax of 18% under RCM for the above services categorised as 'Business Auxilliary Services'; that after implementation of GST, they had started to pay IGST and in GSTR-1 they had shown the same under Export of services; that over and above they are also involved in export of goods and they had made export with payment of duties; that because of export of services, problems have arisen in ICEGATE site and they could not get their refunds due to mismatch in the amounts and that they had paid IGST upto 31.03.2018.

3. The applicant further stated that due to the above error, they inquired with the GST call services in the Department and came to know that they were liable to pay CGST and SGST and that the same was required to be shown in GSTR-1 under B2C transaction; that thereafter they starting paying CGST and SGST showing the same under B2C transaction in their GSTR-1 returns. They further stated that they had shifted their liability for GST from IGST to CGST and SGST relying on the definition of 'intermediary services' falling under Section 2(13) of the IGST Act, 2017 and accordingly place of provision will be as per Section 13(8)(b) of the IGST Act, 2017 i.e. the place of supply will be the location of supplier of services which in their case is Gujarat only. In view of the above, they started to charge CGST and SGST in place of IGST and are presently paying CGST and SGST based on the above definition. The applicant has put forward the following question on which advance ruling is required:

“We request to your good authority to kindly guide on the subject matter i.e. whether to charge CGST and SGST or IGST looking to our nature of transaction?”

DISCUSSION & FINDINGS:

4. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Himanshu Kothari at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

5. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

6. In this case, the moot point to be decided is as to whether the services provided by the applicant are liable to CGST and SGST or IGST? For this, we first need to know the nature of the transaction carried out by the applicant. As per the submission of the applicant, they have entered into an agreement with Tsudokoma Corporation, Japan to sell their machinery and against the said services, they are receiving commission income from Japan in foreign currency. Based on the submission of the applicant as well as the arguments and discussions made by the representative of the applicant during the course of personal hearing, it appears that the services provided by the applicant are in the nature of services of commission agents or commodity brokers who negotiate between buyers and sellers as a facilitator for the supply of goods for which they are paid a fee or commission. The said service can also be called as ‘intermediary services’. The term ‘intermediary’ has been defined at Section 2(13) of the IGST Act, 2017 and reads as under:

2(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;

6.1 It appears from the above that the service provided by the applicant would be correctly classified under the Heading 9961 (specific sub-heading No.996111(Sr.No.67)) of the Annexure to the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and under the Sub-heading 996111 (Sr.No.67 of Annexure),which reads as under:

S.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
65.	9961		Services in wholesale trade
66.	Group 99611		
67.		996111	Services provided for a fee or commission or on contract basis on wholesale trade.

As per Notification No:8/2017-Integrated Tax(Rate) dated 28.06.2017, the said service appears at Sr.No.5, on which GST liability is 18% and reads as under:

S.No.	Chapter, Section, Heading or Group	Description of service	Rate (per cent.)	Condition
5	Heading 9961	Services in wholesale trade. <i>Explanation</i> -This service does not		

		include sale or purchase of goods but includes: - Services of commission agents, commodity brokers, and auctioneers and all other traders who negotiate whole sale commercial transactions between buyers and sellers, for a fee or commission' - Services of electronic whole sale agents and brokers, - Services of whole sale auctioning houses.	18	---
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6.2 Also, as per Notification No:11/2017-Central Tax(Rate) dated 28.06.2017, the said service appears at Sr.No.5 on which GST liability is 18% (9% CGST + 9% SGST) and reads as under:

S.No.	Chapter, Section, Heading or Group	Description of service	Rate (per cent.)	Condition
5	Heading 9961	Services in wholesale trade. <i>Explanation</i> -This service does not include sale or purchase of goods but includes: - Services of commission agents, commodity brokers, and auctioneers and all other traders who negotiate whole sale commercial transactions between buyers and sellers, for a fee or commission' - Services of electronic whole sale agents and brokers, - Services of whole sale auctioning houses.	9	---

7. Further, the type of GST to be paid i.e. CGST + SGST or IGST is dependent on type of supply of goods or services provided i.e. intra-state or interstate or imports/exports and also on the place of supply of goods or services. Also, since the recipient of service in the instant case is located outside India as discussed earlier, we feel it necessary to refer to Section 13 of the IGST Act, 2017, which helps in determining the place of supply of services in cases where the location of the supplier of services or the location of the recipient of the services is outside India. The same reads, as under:

Section-13. (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 and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:—

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.—For the purposes of this sub-section, the expression ----

(9) The place of supply of services of transportation of goods -----

7.1 We have gone through the relevant provisions of Section 13 above and find that sub-section(2) of Section 13 specifically provides that the place of supply of services **except** the services provided 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. In the instant case, the supplier of service is the applicant and the service recipient is M/s. Tsudokoma Corporation, Japan. We find that the services provided by the applicant i.e. ‘intermediary services’ appears at Sub-Section(8)(b) of Section 13. Also, sub-section (8) clearly mentions that the place of supply in respect of the services described under the said sub-section shall be the location of the supplier of services. Further, the supplier in the instant case is the applicant

and the location of the said supplier is in Ahmedabad, Gujarat. Now, since the location of the applicant, who is supplier of services, is in Gujarat and both the supplier of service as well as the place of supply of service is in Gujarat, the supply of services would be considered akin to intra-state supply of services and would be liable to CGST and SGST (as per the provisions of Section 9(1) of the CGST Act, 2017). Therefore, the present procedure/course of GST payment followed by the applicant i.e. payment of CGST and SGST on the services provided by them, is correct. Further, the applicant would be liable to pay GST at the rate of 18% (9% CGST + 9% SGST) in terms of the provisions of Notification No:11/2017-Central Tax (Rate) dated 28.06.2017.

8. In light of the foregoing, we rule as under –

R U L I N G

Looking to the nature of the transaction of services provided by the applicant M/s. Dharmshil Agencies, Ahmedabad, we rule that the applicant is liable to pay GST at the rate of 18% (9%CGST + 9% SGST).

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 30.07.2020.