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

ADVANCE RULING NO. GUJ/GAAR/R/70/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/06)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Stovec Industries Ltd., NIDC Narol Post, Nr. Lambha Village, Ahmedabad, Gujarat -382405
GSTIN/ User Id of the applicant	:	24AABCS7223D1ZS
Date of application	:	13.02.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(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 item.
Date of Personal Hearing	:	17.08.2020 (Through video conferencing)
Present for the applicant	:	Shri Hardik Shah CA

M/s. Stovec Industries Ltd., NIDC Narol Post, Nr. Lammbha Village, Ahmedabad, Gujarat having a 24AABCS7223D1ZS, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the GGST Act.

2. M/s. Stovec Industries Ltd. an applicant submitted that they are supplier of products in textile and graphics printing market and engaged in manufacturing Rotary screen printing machine and also offers products for conventional and digital engraving methods.

3. The applicant submitted that they have entered into a contract with SPG Prints Austria GMBH (hereafter referred as 'SPA') to provide particular services to customers of SPA in India, **as per SPA's instruction**. Such services shall include installation / up-gradation of machines sold by SPA, training at SPA's customers' site etc. The copy of the contract has been enclosed for reference. The relevant extract from the contract relating to scope of service is as under:

"Services

Stovec has agreed that it shall on behalf of and as per the instruction from SPA shall provide services with respect to:

a) Installation and/or upgrades of machines sold by SPA and shall also give training at SPA's customer site in co-ordination with SPA

b) Machines sold by SPA in India and which are under warranty period

c) Machines which are under service contracts with SPA

d) Machines which are not having warranty and/or service contracts"

Apart from the above mentioned scope of services, Stovec will also receive commission for service contracts sold in India from SPA

4. The applicant submitted that they shall raise the invoice to SPA for services mentioned under Clause (a) to (c). In the case of service at (d), the Applicant shall raise the invoice to Indian Customer for such services. The relevant extract of the contract with regard to invoicing has been reproduced hereunder. The sample copies of invoices are enclosed herewith as **Annexure C**.

"Stovec shall raise an invoice for the said services:

- to SPA, if the service belongs to service mentioned under Clause 1(a) to Clause (c)

- to the Indian Customer, if the service belongs to service mentioned under Clause 1(d)"

5. The applicant submitted that the **present application seeking Advance Ruling is restricted to and is in respect of the activities covered under clause (a) to (c) of the 'Services' section of the contract (hereunder referred as 'specified transactions').**It has also been agreed upon that the applicant shall not solicit service with the customers of SPA outside India while servicing SPA's machines with the customer. The relevant extract of the contract has been reproduced hereunder:

"Service Area

a) Stovec will service SPA's machines in India

b) Stovec shall not actively solicit service customers having their place of business or in default of such place, their place of residence, outside India"

6. The applicant further stated that to provide such services, they would receive service charges as consideration in convertible foreign currency periodically. The applicant would invoice SPA on the basis of number of hours spent on supply of service in terms of the said contract. Hourly rates have also been agreed upon in the contract for the various area of hours spent on the supply of service. The relevant extract of the contract has been reproduced hereunder. The sample copies of proof of payment received in convertible foreign currency is enclosed herewith as **Annexure D.**

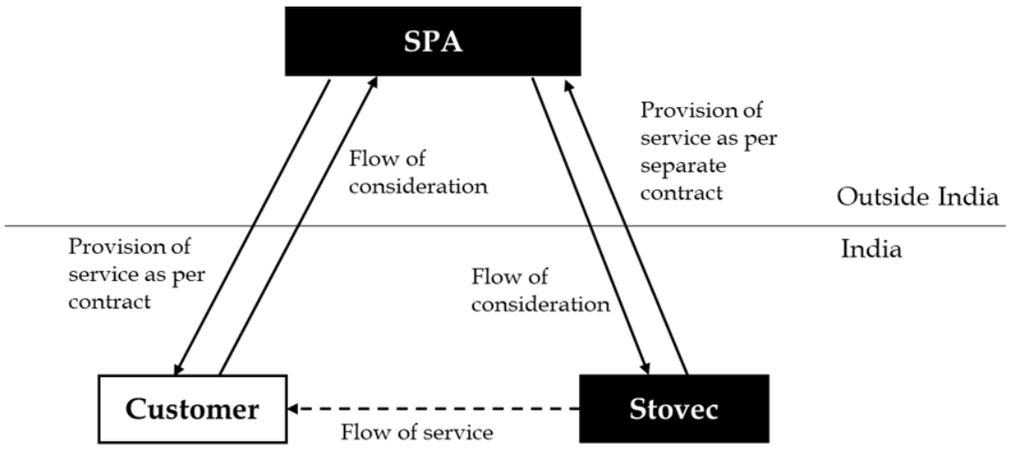
"Service Charge

Hourly rates

From Stovec to SPA are:	
Travel Hours	*EUR 40*
Working hours	*EUR 40*
Overtime	*EUR 60*

The revision, if any, in above mentioned hourly rates shall be mutually decided between both the parties to the agreement in the first month of each calendar year, till the time this agreement subsists."

7. A pictorial representation of the transaction between the parties has been produced hereunder for ease of understanding:



8. In view of the above, the Applicant sought the Advance Rulings on the following questions on the specified transaction:

Question 1. Whether, in the facts and circumstances, the specified transaction of the Applicant should be categorized as individual supply or composite supply of service as per the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017?

Question 2. Whether, in the facts and circumstances, the specified transaction of the Applicant is to be reckoned as being provided to SPA or to the customers of SPA located in India?

Question 3. - Whether, in the facts and circumstances, the specified transaction of the Applicant could be categorized as that of an "intermediary" as per Section 2(13) of The Integrated Goods and Service Tax Act, 2017?

Question 4. - Whether, in the facts and circumstances, the specified transaction qualifies to be "Export of service" as per Section 2(6) of The Integrated Goods and Services Tax Act, 2017?

Applicant's interpretation of law and/or facts

PART-A Whether, in the facts and circumstances, the specified transaction of the Applicant should be categorized as individual supply or composite supply of service as per the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017?

1. The Applicant submitted that the activities agreed between parties in terms of the contract include services for installation or upgrades of machines sold by SPA, training to the customers of SPA, services in respect of machineries sold by SPA, which are either in warranty period or covered by separate service agreement with SPA etc.

2. The Applicant submitted that all the activities are independent and separate from each other. Further, the activities to be performed by the Applicant would be as per the requirement of each of the customers and would not be offered in a bundle. Even, the consideration so determined for above activities is separate and there is no single price. The consideration agreed with SPA is based on hourly rate for activities such as travelling, regular work or overtime hours and based on the time spent for each of the activities, the Applicant would raise invoice on SPA.

3. Under the CGST/SGST Act, it can be understands that supply can be individual or composite. The term 'composite supply' is defined in Section 2 (30) to mean a supply consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. In present case, the activities are separately performed and there is no combination of activities as such. Further, since, the activities are individual; here is as no principal supply as predominant element. Thus, the Applicant believes that they do not provide composite supply.

4. Considering above discussion, the Applicant believes that present supplies are individual / independent supplies and there is no composite or mixed supply. However, the Applicant invites attention to the legal provisions and determines that the supplies made by the Applicant qualify as individual supply of service.

PART-B Whether, in the facts and circumstances, the specified transaction of the Applicant is to be reckoned as being provided to SPA or to the customers of SPA located in India?

5. Essentially the question in this case revolves around who is the "recipient" of supply for the services supplied by the Applicant. The term "recipient" has been defined under Section 2 (93) of The Central Goods and Services Tax Act, 2017 ('CGST Act'). The definition has been reproduced hereunder for your easy reference:

> *"(93) "recipient" of supply of goods or services or both, means—*
> *(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*
> *(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*
> *(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,"*

6. Therefore, in cases of supply involving consideration, the person who is liable to pay consideration would be considered as the recipient of supply. In the present

case, the consideration is paid by SPA and hence, the Applicant believes that SPA would be considered as 'service recipient' for the supply of services by the Applicant for the specified transaction.

7. Moreover, the Applicant submitted that the meaning of expression 'recipient of services' had arisen under the erstwhile Service Tax regime. Although the term 'recipient of service' was not defined in the Service tax legislation, 'Taxation of Services: An Education Guide' issued by Tax Research Unit Wing of CBEC stated that a person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

8. The above statement is pari materia with the provisions mentioned in CGST/SGST regime which also states that the person responsible for payment would be considered as receiver of the services.

9. The applicant placed reliance on the order of CESTAT in the case of **Paul Merchants Limited Vs. Commissioner of C. Ex., Chandigarh [2013 (29) STR 257 (Tri.-Del.)]** wherein the Hon'ble Tribunal has discussed the issue as to who ought to be considered as service recipient in any transaction. The relevant extract of the order is reproduced hereunder, for ready reference.

> *71.1 It has been pleaded that the recipient of the services provided by the agents of WU is not WU but the persons in India receiving the money sent by their friends and relatives abroad through WU and their agents and this is not the export of service. This plea is totally incorrect.* ***The service recipient is the person on whose instructions/orders the service is provided, who is obliged to make the payment from the same and whose need is satisfied by the provision of the service.*** *WU having accepted money along with commission from their customers abroad for delivery to their intended beneficiaries in India are under obligation to get the money delivered in India and for this purpose, they have engaged the agents as WU does not have any business establishment or offices in India to discharge this obligation directly. The obligation of WU to deliver the money received by them from their customers abroad to their intended beneficiaries in India is discharged by the agents either directly or through sub-agents and for this the Agents get a commission from WU. Thus it is WU who have received the services provided by Agents and have used this in relation to their business of money transfer and therefore have to be treated as recipient and consumer of service not the person receiving money in India through WU. There is one more reason why the persons to whom the money was delivered by agents/sub-agents of WU cannot be treated as recipient of services provided by WU.*

9.1 The applicant stated that **Service Tax is akin to tax on sale of goods. Service Tax can be said to be a tax on sale of service. Just as sale of goods which attracts sales tax is transfer of property in goods by a person (seller) to another person (buyer) for some consideration, a service is an activity carried**

out by a person for another for some consideration. Just as in case of sale of goods it is buyer who is obliged to pay for the goods purchased, in case of provision of service, it is recipient of the service who is obliged to pay for the service to the service provider. Thus the service recipient is the one who is obliged to pay for the services to the service provider and whose need is satisfied by the service or in other words, is the buyer of service.

10. In addition to above, the Applicant also relied upon the order of Hon'ble CESTAT in the case of **GAP International Sourcing (India) Pvt. Ltd. vs. Commr. of S.T., Delhi 2015 (37) S.T.R. 757 (Tri. - Del.)** wherein the Tribunal has analyzed as to who ought to be considered as 'service recipient' in any transaction. The relevant extract of the decision is reproduced hereunder, for ready reference.

> *"8.3 Though the term 'recipient' in respect of a service is not defined in the Finance Act, 1994 or in the rules made there under, the gap has to be filled by construction and on the analogy of the transaction of sale of goods, the service recipient in a transaction of the provision of service, has to be treated as the person -*
> *(a) on whose instructions the service has been provided and who is obliged to make payment for the provision of service; and*
> *(b) whose need is satisfied by the provision of service - it may be his personal need or the need of his business or need to meet some obligation to some person.*
> *Since service is normally an activity performed by a person A for some other person B for some consideration, and this activity by A may affect some other persons C, D and E in some manner, good or bad, the persons C, D and E are the person affected by the service, they cannot be treated as service recipient - the service recipient would be B who has paid for the service and whose need has been satisfied by the provision of service…"*

11. Moreover, in the case of *Universal Services India Private Limited [2016 (5) TMI 750[,* the assessee proposed to enter into an agreement with Wild West Domains, LLC (WWD) to provide payment processing services to WWD wherein it proposed to assist the customers of WWD located in India with the processing of payments to WWD. It was observed by Authority for Advance Ruling that no remuneration / consideration is received by the applicant from Indian Customers. Applicant would only receive from WWD US, a fee equal to the operating cost incurred by the applicant plus mark up of 13% on such costs for payment processing services. It is noticed that applicant would receive said fees from WWD US, even in respect of Indian Customers, who directly remit service charges to WWD US through International Credit Card, wherein applicant is not in the picture. In view the above it was observed that by providing the payment processing services to WWD, the applicant is not providing any service to the customers of WWD in India.

12. Based on above discussion, it could be stated that a person would be qualify as recipient of supply if the following ingredients are satisfied:

Ingredients / attributes	Present set of facts
On whose instructions the services are provided	SPA
Who would pay for the services so provided	SPA
Whose needs would be satisfied as a reason of provision of service	SPA

13. Considering the above, the Applicant submittted that the service recipient for specified transaction would be SPA.

PART C – Whether, in the facts and circumstances, the specified transaction of the Applicant could be categorized as that of an "intermediary" as per Section 2(13) of The Integrated Goods and Service Tax Act, 2017?

14. The term 'intermediary' has been defined under Section 2(13) of The Integrated Goods and Service Tax Act, 2017 which has been reproduced hereunder:

> *"(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;"*

15. From perusal of above, the Applicant understands that there are following attributes which should be present in any arrangement to qualify as intermediary.

i. An intermediary means a broker, agent or any other person by whatever name called

ii. The person arranges or facilitates the supply of goods or services or both or securities between two or more persons.

iii. The person should not supply goods or services or securities on his own account

The Applicant is not an "agent, broker or any other person"

16. As evident from the definition, the supplier i.e. the intermediary should 'mean', a broker or an agent or any other person, by whatever name called. It is important to note the use of the word 'means'. It is trite law that the use of the word 'means' in a definition governs the words following and has a restrictive meaning. In the present case an intermediary can mean only a broker, an agent or any other person, by whatever name called.

17. The first two words in the means clause are broker' or 'an agent'. The words 'broker' and 'agent' have been defined in the Black's Law Dictionary as:

Broker

"An agent employed to make bargains and contracts between other persons, in matters of trade, commerce, or navigation, for a compensation commonly called "brokerage."

Agent

"One who represents and acts for another under the contract or relation of agency, q. v. Classification. Agents are either general or special. A general agent is one employed in his capacity as a professional man or master of an art or trade, or one to whom the principal

confides his whole business or all transactions or functions of a designated class; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment."

18. The dictionary meanings extracted above, clearly indicate that there is an element of 'representation' or 'acting on behalf of the other person' present in the words. In other words, an agent and a broker does not work at their own behest or instruction but as a representative or on behalf of their principal.

19. The last phrase in the means clause of the definition of 'intermediary' contains the clause "or any other person, by whatever name called". The question that has to be asked is whether "any other person" will have a nature/ character distinct from that of a broker or an agent or will continue to have the same nature and character as that of a broker or an agent.

20. The most appropriate rule of interpretation which is to be used while interpreting the phrase 'by whatever name called' is the legal principle of *Ejusdem Generis*.

21. The application of this Rule is necessitated because of the use of a general phrase preceded by specific words. The words *'ejusdem generis'* mean 'of the same kind or nature'. *Ejusdem generis* is a rule of interpretation that where a class of things is followed by general wording that is not itself expansive, the general wording is usually restricted things of the same type as the listed items.

22. The Golden Rule of Interpretation enunciated and espoused by various judicial pronouncements states that the words of a statute must be given their plain grammatical meaning. If the intention of the legislature has to be gathered and deciphered in its proper spirit having due regard to the language used therein. When the words are not clear or are ambiguous, aid of other rules of interpretations must be used

23. The rule of *Ejusdem Generis* is applied in the following cases:

- ☐ The statute enumerates the specific words;
- ☐ The subjects of enumeration constitute a class or category;
- ☐ That class or category is not exhausted by the enumeration;
- ☐ The general terms following the enumeration; and
- ☐ There is no indication of a different legislative intent.

24. The Punjab and Haryana High Court in the case of ***CIT v. Rani Tara Devi[2013] 355 ITR 457 (P & H)*** held as below:

"The expression 'by any other name' appearing in Item (a) of clause (iii) of Section 2 (14) of the Income Tax Act has to be read ejusdem generis with the earlier expressions i.e. municipal corporation, notified area committee, town area committee, town committee."

25. The phrase 'by any other name' and 'by whatever name called' have a proximate purpose in a statute and hence the principle laid down by the P&H High Court supra will apply on all squares.

26. Further, the Supreme Court in the case of ***Commissioner of Income Tax, Udaipur v. Mcdowell& Co. LtdIn civil Appeal 3471/ 2007 decided on 8 May 2009*** held as follows:

"10. It would be pertinent to note that the expression now used in Section 43B (i)(a) is "Tax, Duty, Cess or fee or by whatever name called". It denotes that items enumerated constitute species of the same genus and the expression 'by whatever name called' which follows preceding words 'Tax', 'Duty', 'Cess' or 'fee' has been used ejusdem generis to confine the application of the provisions not on the basis of mere nomenclatures, but notwithstanding name, they must fall within the genus 'taxation' to which expression 'Tax', 'Duty', 'Cess' or 'Fee' as a. group of its specie belong vis. compulsory exaction in the exercise of State's power of taxation where levy and collection is duly authorised by law as distinct from amount chargeable on principle as consideration payable under contract."

27. Thus, applying the principle laid down by the Hon'ble Supreme Court*(supra)*, and the interpretative rule of *Ejusdem Generis*, the phrase; by whatever name called' will include a person in the same genus as that of a broker or an agent. In other words, the phrase 'by whatever name called', will mean a person who is also appointed in a representative capacity.

28. The Applicant is thus clearly neither appointed to act as a broker or an agent nor in any manner similar to that of a broker of agent. If that were the case, the same would have been apparent from the agreement itself. Thus, the first condition to be satisfied for a person to qualify as an "intermediary" is not fulfilled.

The Applicant does not *"arrange or facilitate provision of services or supply of goods"*

29. The Applicant submittted that the second part of the definition of the term 'intermediary' defines the nature of transactions which if provided by a broker or an agent or by any person (by whatever name called) would be covered under the services provided by an 'intermediary'.

30. This second condition needs to be cumulatively fulfilled, i.e. it should entail "arrangement" or "facilitation" of a 'main supply of goods or services' between the service recipient, i.e. the overseas entity and its customers in India. In other words, an 'intermediary' is expected to play an active role in arranging or facilitating the actual provision of service or supply of goods between the real service provider and real service recipient. Hence, there should be an interaction or facilitation with the feature of supply of the (main) service and the 'intermediary' should have a role in the main supply of goods or services being rendered by the service recipient to its customer in India.

31. As per the definition of "intermediary service", the words that have been used in the definition are (a) arranges and (b) facilitates. It would be pertinent to understand the meaning of these words:

Facilitate (Verb) – Oxford English Dictionary – 'to make an action or process easy or easier"
Arrange (Verb) – Oxford English Dictionary – 'organize or make plans for (a future event)'

32. From the above definitions, it is important to understand that there should be provision of service by main supplier and the person viz. agent, broker or any other person should facilitate by way of making the exercise easy or easier. In present case, there is no performance of service by SPA and actual services are performed by the Applicant itself. To mean, there is no facilitation but actual doing / undertaking of activity on their own. Moreover, the Applicant does not arrange the supply by organizing or making plans but as discussed, the Applicant actually indulges itself into doing the act on their own. Thus, it is clear that there is no facilitation or arrangement of supply of goods or services by the Applicant in present case.

33. The Applicant specifically submitted that not all *facilitating or arranging* qualify as an "intermediary". The person should also not supply on their own account.

The Applicant supplies services on their own account
Arrangement between the Applicant and SPA is on a principal-to-principal basis

34. In the present case, the Applicant is providing the services on its own account. Therefore, there is no arranging or facilitating of provision of service or supply of goods and hence the test of intermediary services' is thus not satisfied in the present case.

35. In addition to defining the nature of person, the nature of supply, the definition of the term 'intermediary' contains an exclusion in as much as any person (including a broker, agent or any other person) who provides the main supply on his own account. In other words, the Applicant submits that even if the supplier satisfies the nature of supplier of service as an agent/ broker; if such a person provides the supply on his own account, then such a supplier is not covered under the definition of term intermediary.

36. The importance of this condition has been explained in the Education Guide released under the erstwhile Service Tax era, which provides that a person 'who arranges or facilitates a provision of a service, but provides the main service on his own account is also excluded from the definition of "intermediary". The Education Guide specifically recognizes and well explains that all situations of provision of service on a client's behalf, will not qualify as an "intermediary". Where the service is provided on the "own account" of the service provider, the categorization as an "intermediary" does not arise. The relevant extract of the Education Guide issued by the CBEC in June 20, 2012 is reproduced below:

“5.9.6 What are "Intermediary Services"? …
Similarly, persons such as call centers, who provide services to their clients by dealing with the customers of the client on the client's behalf, but actually provided these services on their own account, will not be categorized as intermediaries.”

37. More so, the clarification above fully recognizes an arrangement between a service provider and a service recipient, where customers of the service recipient are dealt with by the service provider, shall not qualify to be an “intermediary”. This principle well covers all sub-contracting arrangements.

38. The Applicant further places reliance on the decision of CESTAT in the case of **Principal Commissioner Vs. Comparex India Pvt. Ltd. [2020-TIOL-159-CESTAT-DEL]** wherein the question before the CESTAT was whether the services provided by the Respondent would be contemplated as intermediary services or not. In this decision, the CESTAT upheld that not only does the agreement specifically mentions that there is no relationship of principal and an agent between Microsoft and the respondent but it is also clear from the agreement that the respondent is free to sell the product at any price to the customer, though the price to be paid by the respondent to Microsoft is fixed. The agreement also provides that payment have to be made to Microsoft even if the customer does not pay the respondent. This is, therefore, a case where the respondent provides the service or supplies the good on his own account. Though the decision is relating to sale of goods, this would be equally applicable in present case.

39. The Applicant submits that the specified transaction undertaken by the Applicant are on in its own account. The Applicant also submits that the relationship between the parties are that of independent contractors and not as principal-agent.

The Applicant receives fixed consideration based on number of hours spent and **does not receive any commission amount as in the case of “intermediary”**.
40. It is to be also noted that the Applicant is not compensated in the form of brokerage and further they do not negotiate on behalf of SPA. In other words, the Applicant does not have any express or implied authority to negotiate any agreement on behalf of SPA.

41. Further, it is pertinent to note that the Applicant would be paid for independent of whether the amount is received by SPA or not. Moreover, the amount paid to Applicant is not some percentage of amounts to be received by SPA but it is an agreed amount based on hours spent for providing services. This means that the yardstick for paying the Applicant is not based on any percentage or whether any supply is made by SPA etc.

42. As clarified in the Education Guide, an intermediary (such as travel agents, tour operator, commission agent of service and recovery agent) is remunerated based on successful closure of a transaction which is not the fact pattern in present case.

43. Apart from above, the guiding principles provided in Education Guide issued under during erstwhile Service Tax regime for determining whether a person is acting as an intermediary or not can be discussed here to analyse if the supply of service by the Applicant can be categorized as intermediary or not. These guiding principles are:

(i) 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.

(ii) 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".

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

44. In light of the above parameters of the definition of intermediary, it is to be evaluated now whether the services to be provided by the Applicant to SPA under the present agreement fulfils the parameters of intermediary or not.

Sr. No.	Nature of Service/ activity	Criteria to qualify as intermediary	Applicability in case of the applicant
1	Relation of principal and agent	Yes	Not fulfilled - Relationship between the Applicant and SPA is that of independent contractors or principal to principal basis and not of principal and agent
2	Power to make contract on behalf of other party which will bind the other party	Yes	Not fulfilled - The Applicant shall not have any right to sign any document in the name of or on behalf of SPA
3.	Power to alter the nature or value of the service	No	Not applicable - the services provided by the Applicant to SPA are independent of the transaction between SPA and their customers in India
4.	Power of negotiation on behalf of principal	Yes	Not fulfilled – SPA can only negotiate the terms with customers in India
5.	Arrangement or facilitation of supply of service	Yes	Not fulfilled - as explained above in the facts that the Applicant's role is to actually provide services and there is no element of facilitation or

			arrangement of supply
Separation of Value			
6.	Value of service is invariably identifiable from the main supply	Yes	No – Value is not linked with the supply by SPA. The Applicant charges fees / consideration based on hours spent.
7.	Consideration is generally an agreed percentage of the sale or purchase price which is called commission	Yes	Not applicable - there is no consideration paid to the Applicant by SPA which is dependent on the volume of supply made or to be made by SPA
Identity & Title			
8.	Service provided on behalf of the principal is clearly identifiable	Yes	Not fulfilled - the Applicant is not providing any services on behalf of principal, as the specified transaction explained in the facts above, are provided by the Applicant in its own capacity directly to SPA on principal to principal basis and are independent of any supply by SPA.

Judicial precedents under the erstwhile service tax law

45. Under the erstwhile service tax regime, the scope of the definition of the intermediary services were analysed and it was held that when the services are provided on a principal to principal basis, then the activity will not qualify under the definition of intermediary.

46. In the case of **Chevron Philips Chemicals India Private Limited [2020-TIOL-178-CESTAT-MUM]**, the appellants are appointed by their overseas counterpart CPC Global for sales promotion of the goods for their client in the defined territory. The appellant has no role in fixation of price nor they negotiate in any manner between CPC Global and their clients relating to sales promotion of the goods sold. Therefore, it was observed that the appellant cannot be called as an intermediary under Rule 2(f) and Rule 9 of the POPS Rules, 2012.

47. In the case of **Commissioner of Goods and Service Tax Gurgaon-II Vs. Orange Business Solutions Pvt. Ltd. [2019-TIOL-1556-CESTAT-CHO]**, the respondent provides outsourced services and back office services for Orange group entities. The following was observed by Chandigarh CESTAT:

"11. From the agreement placed before us and arguments adduced before us, we find that the activity of computer networking is networking service which is an application running at the network application layer and above, that provides data storage, manipulation, presentation, communication or other capability which is often implemented using a client-server or peer-to-architecture based on application layer network protocols.

12. In view of the above, we do not find any arrangement or facilitation of the main service between two parties by a third person under the category of computer networking services.

13. We further find that the mandate from the group involves various companies more than two. So it is delivered to third entity on the direction of one M/s. Equant Network Services International Limited (ENSIL) and they act as intermediary. The appellant are 'processing equipment supply order's including liaison/coordination', so the liaison/coordination is also equivalent to solicitation and is more near to intermediary nature that the act of solicitation. Each mandate where there are two or more than two companies are involved would not automatically by termed as intermediary merely on the ground of involvement of two or more companies. To be intermediary, the criteria laid down has been discussed hereinabove. We hold that the respondent is not intermediary."

48. Further, the applicant relied upon the decision in the case of ***M/s. Evalueserve. Com Pvt. Ltd. Versus CST, Gurgaon 2018 (3) TMI 1430 - CESTAT CHANDIGARH***, where the CESTAT, Chandigarh after relying on the decisions in the case of ***IN RE: GoDaddy India Web Services Pvt. Ltd*** and ***IN RE: UNIVERSAL SERVICES INDIA PVT LTD*** has held that the Appellant were themselves providing the services to their client as the main service provider on principal to principal basis and hence the activity undertaken by them will not qualify as intermediary as defined in Rule 2(f) of Place of Provision of Services Rules, 2012.

49. Reliance is also placed on the decision of the CESTAT, Chandigarh in the case of ***Sunrise Immigration Consultants Private Limited v. CCE &ST, Chandigarh2018-VIL-539-CESTAT-CHD-ST.*** In this case, the Appellant was getting certain amount as commission for facilitating the aspirant student to get admission to the college and for referring investors borrow loan from foreign based bank to the people who wishes to settle in Canada. The Chandigarh CESTAT interpreted the definition of 'intermediary' under the erstwhile service tax regime and held that this activity undertaken by the Appellant which is in the nature of promoting the business of the college will not be covered under the definition of intermediary as the commission earned by them is covered under Business Auxiliary Service which is not the main service provided by the main service providers namely banks/university. Further it was held that the services rendered by the appellant duly qualified as export of service in terms of Rule 3 of POPS Rules, 2012.

50. In the case of **M/s Godaddy India Web Services Pvt. Ltd. [2016-TIOL-08-ARA-ST]**, the Applicant proposed to engage in promotion and marketing of GoDaddy US services in India, supervision of quality of third party customer care center services and payment processing services. The question for determination of AAR was that while providing business support services to GoDaddy US, is the Applicant providing any service to customers of GoDaddy US in India. The AAR observed the following:

"Applicant proposes to provide support services in relation to marketing, branding, offline marketing, oversight of quality of third party customer care centre and payment processing, on principal to principal basis. These services are proposed to be provided

with the sole intention of promoting the brand GoDaddy US in India and thus augmenting its business in India. Therefore, these services proposed to be provided by the applicant, would support the business interests of GoDaddy US in India."

51. Apart from above, it is important to note that there is no privity of contract between the Applicant and the customers of SPA located in India. The Applicant is responsible towards SPA only and is concerned with the price agreed between them irrespective of what amount SPA is charging to customer in India.

52. Considering above discussion, the Applicant submits that they are not broker, agent or any other person who arranges or facilitates the supply. Also, the Applicant is providing the services to SPA on their own account and hence, the Applicant would not qualify as intermediary for the services under question

PART D – Whether, in the facts and circumstances, the specified transaction qualifies to be "Export of service" as per Section 2(6) of The Integrated Goods and Services Tax Act, 2017?

53. The term 'export of services' has been defined under Section 2(6) of The Integrated Goods and Services Tax Act, 2017 ('IGST Act, 2017') as under:

(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

54. Accordingly, the following conditions are required to be fulfilled by any assessee to qualify as an export of service:

Sl. No.	Condition for export of service	Fulfilment of conditions
1.	Supplier of service is located in India	Fulfilled
2.	Recipient of service is located outside India	Fulfilled
3.	Place of supply of service is outside India	To be analysed
4.	Payment for such service is has been received by the supplier of service in convertible foreign exchange	Fulfilled
5.	Supplier and recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8	Fulfilled

55. Considering this, it would be relevant to decide the place of supply for the specified transaction. Section 13 of the IGST Act, 2017 is applicable in case where location of

supplier or location of recipient is outside India. Further, as per Section 13(2), the place of supply shall be the location of recipient of services provided the services are not covered in sub-section (3) to (13). From perusal of sub-section (3) to (13), we believe that Sub-section (3) and sub-section (8) would be relevant for discussion:

"(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:*

……..

*(b) services supplied to an individual, r****epresented 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."*

56. From the perusal of the above, it can be understood that these provisions are applicable only when the goods are made **physically available by the recipient of services** or requires physical presence of the recipient of services. However, in the present case, as discussed in Part B, the Applicant believes that the recipient of services for the specified transaction is SPA and not the customers of SPA located in India. Therefore, we believe that Section 13(3) would not be relevant for determining the place of supply for the specified transaction.

57. Now, Section 13(8) has been reproduced hereunder:

"(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."

58. Section 13(8) states that the place of supply shall be the location of supplier of services if the services supplied are in the nature of intermediary services. At this juncture, the Applicant wishes to submit that as discussed in Part C of this application, the Applicant believes that the specified transaction does not qualify to be an intermediary service and hence, Section 13(8) would not be applicable in the specified transaction.

59. Considering that Section 13(3) to Section 13(8) are not applicable in the present scenario, the Applicant believes that Section 13(2) would be applicable and hence, the

place of supply of services shall be the location of the recipient of services i.e. location of SPA, which is outside India.

60. Considering the above, the Applicant believes that the specified transaction would qualify to be an export of service under the GST regime. However, in light of the above discussion, the Applicant wishes to know whether the specified transaction would qualify to be export of services in the GST regime.

61. Without prejudice to above submission, the Applicant respectfully has requests to grant an opportunity of personal hearing in this matter in order to explain the matter more lucidly. The Applicant reserves their right to modify, rescind or alter any part of submissions and to place additional evidence in support of their contention at the time of personal hearing.

Personal Hearing

62. Personal hearing in the matter was held on 17-08-2020. Authorised representative of the company appeared on behalf of the applicant and re-iterated the submission made in the Application.

DISCUSSION & FINDINGS

63. 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. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

64. 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 the GGST Act.

65. We observe that the applicant is supplier of products in textile and graphics printing market and engaged in manufacturing of Rotary screen printing machine and also offer products for conventional and digital engraving methods. The applicant have entered into a contract with SPG Prints Austria GMBH (herein after referred as 'SPA') to provide particular services to customers of SPA in India, as per SPA's instruction. Such services shall include installation / up-gradation of machines sold by SPA, training at SPA's customers' site etc. The relevant extract from the contract relating to scope of service is as under:

"Services

Stovec has agreed that it shall on behalf of and as per the instruction from SPA shall provide services with respect to:

a) Installation and/or upgrades of machines sold by SPA and shall also give training at SPA's customer site in co-ordination with SPA

b) Machines sold by SPA in India and which are under warranty period

c) Machines which are under service contracts with SPA

d) Machines which are not having warranty and/or service contracts"

Apart from the above mentioned scope of services, Stovec will also receive commission for service contracts sold in India from SPA

"Service Area

a) Stovec will service SPA's machines in India

b) Stovec shall not actively solicit service customers having their place of business or in default of such place, their place of residence, outside India"

c) Both parties agree that service outside India is allowed only after request and written authorization from SPA

Customer Contract / Service Process

In case of service request for any machine, customer can directly contact either SPA or Stovec. In case the customer contacts Stovec first then SPA has to be informed and as per SPA's instruction action to be initiated from Stovec.

Stovec will co-ordinate with SPA's area co-ordinator, directly solve the problem of customer, whereas the release of an action towards the customer will come from SPA's area co-ordinator. This is valid for service mentioned under Clause 1(a) to (d).

66. The applicant submitted they shall raise the invoice to SPA for services mentioned under Clause (a) to (c). In the case of service at (d), the Applicant shall raise the invoice to Indian Customer for such services. The relevant extract of the contract with regard to invoicing has been reproduced hereunder.

"Stovec shall raise an invoice for the said services:

- to SPA, if the service belongs to service mentioned under Clause 1(a) to Clause (c)

- to the Indian Customer, if the service belongs to service mentioned under Clause 1(d)"

67. The applicant submitted that the present application seeking Advance Ruling is restricted to and is in respect of the activities covered under clause (a) to (c) of the 'Services' section of the contract (hereunder referred as 'specified transactions'). Accordingly, we take up the one by one question on which applicant sought the Advance Ruling.

68. The first issue is here to decide whether the transaction of applicant should be treated as individual supply or composite supply as per CGST Act, 2017. Now, first we decide whether the supplies are naturally bundled & in conjunction with each other as required by the definition of "composite supply". Hence, we refer to the definition of **`*Composite Supply'*** as mentioned in sub-section (30) of Section 2 of CGST Act, 2017, which is as under:

`*Composite supply* *means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any*

combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply'.

Under the GST Act, a composite supply would mean a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. We find that applicant proposes to provide more than two taxable supplies to the recipient. In respect of supply which consist of more than two taxable supplies and to fall within the ambit of composite supply, it will be necessary for us to determine whether a particular supply is naturally bundled in the ordinary course of business or otherwise.

The Flyers issued by the Central Board of Excise and Customs ('CBEC') for composite supply have provided guidance on how to determine whether supplies are naturally bundled in the ordinary course of business as below:

"Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below: -

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.*

- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*

- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.*

- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –*
  - *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*
  - *The elements are normally advertised as a package.*

- *The different elements are not available separately.*
- *The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.*

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

69. Thus, for a supply to qualify as a 'composite supply', the following needs to be satisfied:

(i) There should be more than two supplies of goods or services or both;

(ii) They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business; and

(iii) There should be one principal supply.

70. The above conditions have been examined in the present case, as under:

70.1 *<u>There should be more than two supplies of goods or services or both</u>:*

The applicant is providing services for installation or upgrades of machines, training to the customers of SPA in respect of machineries sold by SPA, which are either in warranty period or covered by separate service agreement with SPA etc. The consideration agreed with SPA is based on hourly rate for activities such as travelling, regular work or overtime hours and based on the time spent for each of the activities. Accordingly, they are providing more than two services i.e. installation or ugradation of service, training to the customer for the operation of machine and other activities like overtime service.

70.2 <u>They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business:</u>

Applicant service of installation/ up-gradation of machine, training of customer, travelling hours, working hours and overtime service are naturally bundled and supplied in conjunction with each other in the ordinary course of business. This aspect can be understand by assuming that if engineer of applicant is to visit customer of SPA in India for installation / updation of machine, then he has to travel and for completion of work there may be possibility to work extra hour by the engineer and all these activities are naturally bundled because without one activity other activity or service cannot be performed. Further in the contract held between the applicant and SPA, service charges are defined as under;

Service Charge

Hourly rates

From Stovec to SPA are	
Travel Hours	*EUR 40*
Working hours	*EUR 60*
Overtime	*EUR 60*

Further, we Members of the Authority have gone through the invoice submitted by the applicant and it is observed that applicant has charged the amount under "three heads" a) Service Charges towards visit of service engineer- "Working hours" b) Service Charges towards visit of service engineer- "Overtime hours" and c) Service Charges towards visit of service engineer- "Travelling hours". From the head of said charges in can be concluded that all the service i.e. Working hours, travelling and overtime hours are naturally bundled service and supplied in conjunction with each other in the ordinary course of business. Hence, the applicant service falls under the definition of "*composite supply".*

70.3 *There should be one principal supply.*

The applicant is supplying the service of installation/up-gradation & training and said supply of service is a principle supply as such they are charging per hour for the said service under the head "Working hours" and other service like "travelling hours" and "Overtime hour" are naturally bundled service to the main service.

The applicant satisfies all the above three conditions, hence the applicant services get covered under the definition of "*composite supply".*

71. Now we take up the second question of the applicant which is regarding the recipient of the service supplied by the applicant. The applicant sought Ruling that specified transaction to be considered as provided to SPA or to the Customers of SPA located in India. To determine the recipient of service we refer to sub-section (93) of Section 2 of CGST Act, 2017 which is read as under:

(93) "recipient" of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

72. The Applicant, has argued that person who is liable to payment of goods and service is an recipient of service. While developing the above line of argument, applicant fails to appreciate the true meaning of the terms 'recipient', as defined under Section 2(93) of the CGST Act. It is an exhaustive definition, implying it can neither be expanded nor reduced. In the context of a supply involving payment of consideration, a 'recipient' of supply of goods or services means the person who is liable to pay the consideration and *any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply* and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. The 'recipient' is, therefore, so defined as to make separation impossible between the person to whom the supply is made and the one liable to pay the consideration. Of course, when no consideration is involved, as under clause (c) of the above section, the recipient can only be the person to whom the service is rendered. The person who receives the supply in India should, therefore, be considered as the recipient, being inseparable from the foreign buyer as far as the Applicant's supply is concerned. It follows from the above discussion that the Applicant supplies the composite service to the recipient located in India.

73. The applicant has referred the Ruling of M/s.Volvo-Eicher Commercial Vehicles Ltd. of Appellat Authority of Advance Ruling {Order No. KAR/AAAR-14B/2019-20 dated 06.20.2020} *wherein it is Ruled that the person who is required to make a payment for getting the job done is the recipient of service.* The said Ruling is not applicable in the instant case as such the facts and circumstances of the said Ruling are totally different from the applicant case and therefore, cannot be applied in the instant case. Further as per Section 103 of the CGST Act, any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant. Accordingly, AARs Ruling as cited above can't be relied upon in the present case of the Appellant.

74. We, now take up the **third question** of the applicant that specified transaction is to be categorized as that of an "intermediary" as per Section 2(13) of The Integrated Goods and Service Tax Act, 2017 or otherwise.

75. To examine whether the applicant can be categorized as "intermediary" or not, we are required to refer to the definition of the "intermediary" as

provided under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 is examined and the clause reads 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;"*

The intermediary means, as per the above clause, the following persons -

(a) A broker by whatever name called, or

(b) An agent by whatever name called, or

(c) Any other person by whatever name called.

Hence the terms broker and agent are elucidatory, but involves any person and the second part of the definition qualifies the first part. The term 'broker' has not been defined under GST Act. However, the term 'agent' has been defined in Section 2(5) of the CGST Act 2017 to mean *a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another*. Thus, while an agent includes a broker, it does not mean that every broker is an agent. The fundamental difference being that a broker is a middleman whose job is only to facilitate whereas an agent acts on behalf of the Principal. The applicant has submitted in the application that an agent and a broker does not work at their own behest or instruction but as a representative or on behalf of their principal. In the agreement held between applicant and SPG Print (SPA) it is mentioned in "Service" clause that, *" Stovec (Applicant) has agreed that it shall on behalf of and as per instruction from SPA, shall provide services with respect to :"* The applicant himself admitted the fact that they are working on behalf of their Principal i.e. SPG Print hence falls within the ambit of definition of intermediary. However, the definition of intermediary does not limit its coverage to a 'broker' and 'agent' but brings within its ambit even 'any other person, by whatever name called'.

75.1 The words "any other person" are to be analyzed and this inclusion of word "any other person" exclude all persons other than broker and agent and hence a broker or an agent or any person (other than a broker or agent) can be an intermediary. This means that any other person would naturally exclude a broker or an agent. The reliance placed by the assessee on the judgments based on ejusdem generis is not applicable in the present case as the judgments are related to "other names" and not "other persons". They have also argued that the principle of ejusdem generis would also be applicable in interpreting the definition of 'intermediary' whereby the phrase 'any other person, by whatever name called' should be read in conjunction with the terms 'an agent' or a 'broker' and hence the scope of the term 'intermediary would get limited to only such persons who act similar to an agent or a broker or such class of individuals. We

have considered this argument of the Appellant and find that canon of statutory construction 'ejusdem generis' is not applicable in this case. Ejusdem generis is a canon of statutory construction where, when general words follow the enumeration of particular cases of things, the general words will be constructed as applying to things of the same general class as those enumerated. In the case of the definition of 'intermediary' as per Section 2(13) of the IGST Act, the terms 'broker' and 'agent' are fundamentally different. They do not form any category or class. When such is the case, the phrase 'any other person, by whatever name called' cannot draw its colour from the preceding words which are altogether different. The phrase cannot also be interpreted by applying the principle of ejusdem generis as the preceding words 'broker' and 'agent' do not form a distinct category or class to constitute a genus. Therefore, the phrase 'any other person, by whatever name called' will also include persons who are not necessarily similar to 'broker' or 'agent'. The words agent and broker (used in definition of the word 'intermediary' in the IGST Act) are only in the broad construct of being an intermediary or a representative but are not substitutes for each other. When the term "other" is related to the other names given for a class of persons, then the principle of ejusdem generis is applicable. But in the definition, it is clear that the word "other" is used as an adjective to the person and hence it is commonly understood to exclude the other persons who are preceding it and hence the argument of the applicant cannot be accepted.

75.2 The second part states that the person to be covered under "intermediary" must arrange or facilitate the supply of goods or services or both or securities between two or more persons. This is the operating part of the definition and any person, by whatever name called, if he is arranging or facilitating the supply of goods or services or both or securities between two or more persons, he would be covered under the definition of "intermediary". What can be inferred from this is that, it is not the type of person which determines whether one is an 'intermediary' or not. Rather it is the action of arranging or facilitating the supply of goods or services or both, or securities, between two or more persons, which qualifies a person as an 'intermediary'. An intermediary thus can be a broker or agent or any other person and is only a facilitator for the supply of goods or services or both. The act of arranging or facilitation gives rise to two supplies (1) Supply between the Principal and the third party (2) Supply by the intermediary to the Principal for a commission/fee. In other words, an intermediary is a person between the supplier and the recipient who arranges or facilitates the supply. The terms 'arrange' and 'facilitate' have not been defined in the Act. Accordingly we take the help of dictionary meaning. Merriam Webster Dictionary defines the two words as:

Facilitate : *to make (something) easier, to help cause (something); to help (something) run smoothly and effectively.*

Arrange : *to bring about an agreement or understanding concerning; to make preparations, to move and organise (things) into a particular order or position, to organise the details of something before it happens, to plan (something).*

Therefore, a general understanding of the term 'arranging' or 'facilitation' would cover a very wide range of activities. To understand the nature of the transaction, the agreement for supply of services by the applicant to the customer of SPA in India is verified and found that work entrusted to the applicant are as under :

Services

Stovec has agreed that it shall on behalf of and as per the instruction from SPA shall provide services with respect to:

a) Installation and/or upgrades of machines sold by SPA and shall also give training at SPA's customer site in co-ordination with SPA

b) Machines sold by SPA in India and which are under warranty period

c) Machines which are under service contracts with SPA

d) Machines which are not having warranty and/or service contracts"

Service Area

a) Stovec will service SPA's machines in India

b) Stovec shall not actively solicit service customers having their place of business or in default of such place, their place of residence, outside India"

Customer Contact/Service Process

In case of service request for any machine, customer can directly contact either SPA or Stovec. In case the customer contacts Stovec first then SPA has to be informed and as per SPA's instruction action be initiated from Stovec.

Stovec will in co-ordination with SPA's area co-ordinator, directly solve the problem of customer, whereas the release of an action towards the customer will come from SPA's area co-ordinator. This is valid for service mentioned under Clause 1(a) to (d).

Stovec shall raise an invoice for the said services:

- to SPA, if the service belongs to service mentioned under Clause 1(a) to Clause (c)

- to the Indian Customer, if the service belongs to service mentioned under Clause 1(d)"

Obligation of SPA

a) SPA shall provide necessary training and documentation to Stovec's employee(s) to execute the service of its machine in India.

b) SPA shall inform Stovec the schedule of installation/upgradation of SPA machine at customer's premises and also a schedule for the training to be given to the representative(s) of Indian customer's of SPA.

c) ***SPA shall inform Stovec the schedule with the mention as to whether the Service to be provided by Stovec to SPA's Customer is under Warranty, Service Contract or otherwise.***

d) ***With respect to service contract(s), SPA shall send quarterly commission overview to Stovec based on which Stovec shall raise an commission invoice***

e) *SPA shall provide/ supply spare parts/consumables, as may be required, to provide service(s) to SPA Customer(s).* ***Stovec based upon SPA's recommendation must maintain a stock to serve SPA's customers promptly.***

Obligation of Stovec

a) ***Upon completion of Service, Stoves shall send services reports to SPA for services mentioned under clause 1(a) to (d).***

b) ***Stovec shall provide to area-co-rdinator of SPA once in week information pertaining to upcoming service visits at SPA's customers, for service mentioned under clause 1 (a) to (d).***

c) ***Timely submission of Service Charge Invoice & Commission Invoice to SPA's area co-ordinator.***

d) ***--------***

e) ***--------***

f) ***Stovec shall take care about travel arrangement for the Indian technician in general as well as for Indian technicians in general as well as for technicians from Austria for the visit in India.***

g) ***Stovec will send technicians to SPA on a regular basis for training. SPA will arrange training for technicians once in a year and based on the content of the training, the requirement of attendance (no. Of days) to be decided on mutual consent basis.***

Stock of consumables, replenishment and prices

a) ***Stovec is required to maintain Stock of parts and consumables in order to provide adequate services for SPA's machine,*** *whether the Machine is under warranty, service contract or otherwise. Stovec shall deliver/ provide the required parts/consumables at SPA's customer premises from its stock.* ***In case the required parts/ consumables are not available in stock with Stovec, in such cases Stovec will order the part and /or consumables from SPA and SPA shall deliver the same to Stovec or directly to its customer.***

b) ***Stovec must purchase all consumables/parts from SPA (It is not allowed to purchase locally)***

c) ***----------***

d) ***Prices for end customer must be in line with SPA Global Price list. The final price to the customer shall include import duties and other local charges over and above the SPA GLOBAL price list (Landed cost to customer should be the same, regardless if SPA delivers directly to***

customer or Stovec delivers to customer).

76. Further, we members have visited the Annual Report for the Year of 2018 of the applicant. The relevant clause of the said reports are read as under:

Relevant extract of Annual Report 2018

Statement containing information required to be given as per Section II of Part II of Schedule V to the Companies Act, 2013 I. General Information:

1.	*Nature of Industry*	*Manufacturing of perforated nickel rotary screens, rotary screen printing machines, anilox rollers, engraving chemicals, engraving equipment's, rotamesh screens and rotaplate at its factory situated at N.I.D.C. Nr. Lambha Village, Post: Narol, Ahmedabad, Gujarat.*
2.	*Date of Commencement of commercial production*	*The commercial production has already begun and the Company is not a new Company.*
3.	*Financial Performance for the financial year ended 31.12.2018*	*Turnover : Rs. 1930.16 Million Profit Before Tax : Rs. 410.46 Million (before exceptional items)*
4.	*Export Performance*	*For the year ended 31.12.2018, the Company has achieved export turnover of FOB value of Rs. 119.67 Million.*
5.	***Foreign Investment or Collaboration***	***a) SPGPrints B.V., The Netherlands (Formerly known as Stork Prints B.V.) are the Promoters of the Company holding 71.06 % of the equity share capital.*** ***b) The Plant was established in technical collaboration with the holding company as above.***

Item No. 9

SPGPrints B.V. ("SPGPrints"), based out at Netherlands, is a global leader in the textile and graphics printing market and known for its quality products. *In order to meet the quality standards prescribed by SPGPrints and considering the business needs in India, Company needs to import certain raw materials and components from SPGPrints. Under Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, all Related Party Transactions shall require prior approval of the Audit Committee and all material Related Party Transactions shall require approval of Members of the Company. Taking into consideration the past trends, it is likely that transactions with SPGPrints during the financial year 2019 & 2020, may cross the materiality threshold prescribed under Listing Regulations and thus would require approval of shareholders by Ordinary Resolution. Accordingly transactions entered/ to be entered with SPGPrints during the financial year 2019 & 2020, as set out at Item No. 9 of this Notice, has been placed before the Members for their approval by way of Ordinary Resolution.*

The particulars of the contracts / arrangements / transactions are as under:

Particulars	*Information*
Name of the Related Party	***SPGPrints B.V.***
Nature of Relationship	***Holding Company of the Company***
Name of Director(s) or Key Managerial Personnel who is related, if any.	*None except Mr. Dirk Joustra, Mr. Eiko Ris and Ms. Sangeeta Sachdev*
Nature and Particulars of transactions	*Purchase of Raw Materials and Components*
Material terms of the Contracts/Arrangement/ Transactions.	*In the ordinary course of business and on arm's length basis*
Duration of Related Party Transactions	*These transactions are on-going depending upon the needs of business.*
Value of Related Party Transaction during the financial year 2018	*INR 154,070,894/-*
Estimated Related Party Transaction for the financial year 2019 & 2020, as a % of Annual Consolidated Turnover of the Company.	*During mentioned financial years, Related Party Transaction with SPGPrints B.V. with respect to purchase of raw materials and components shall not exceed 20% of Annual Consolidated Turnover of the Company as per last audited financial statements of the Company. Note: For determining Material Related Party Transactions for the financial year 2019, the Annual Consolidated Turnover of the Company for the financial year 2018 will be considered and for determining Material Related Party Transactions for the financial year 2020, the Annual Consolidated Turnover of the Company for the financial year 2019*

	will be considered.

76.1 From the above clauses of the Annual report it is observed that the applicant M/s. Stovec Industries Ltd. is a holding company of M/s. SPG Print, B.V, Netherlands. M/s. SPG Print B.V, Netherlands is having their plants and offices in multiple countries including Austria and India. On the basis of agreement and Annual Report of the applicant, it can be concluded that, the applicant is a holding Company of M/s. SPG Print and applicant being a holding company of M/s. SPG Print is facilitating and arranging the supply of service of installation/ up-gradation, training in respect of Machines supply by M/s. SPG GMBH, Austria (SPA) to their Indian Customers. The applicant is providing services purely on behalf of and as per instruction of SPG Print (SPA) i.e. Principal and this fact itself mentioned in the agreement. On going through the said clauses of the agreement, it is observed that, *in case of service request for any machine received directly by the applicant from the customer, then SPA has to be informed and as per SPA's instruction action be initiated from applicant. The applicant will in co-ordination with SPA's area co-ordinator, directly solve the problem of customer, whereas the release of an action towards the customer will come from SPA's area co-ordinator; SPA shall provide necessary training and documentation to applicant's (Stovec's) employee(s) to execute the service of its machine in India and SPA shall inform applicant (Stovec) the schedule of installation/upgradation of SPA machine at customer's premises and also a schedule for the training to be given to the representative(s) of Indian customer's of SPA; SPA shall provide/ supply spare parts/consumables to the applicant, as may be required, to provide service(s) to SPA Customer(s); applicant (Stovec) based upon SPA's recommendation must maintain a stock to serve SPA's customers promptly; Upon completion of Service, applicant (Stovec) shall send services reports to SPA for services mentioned under clause 1(a) to (d); applicant (Stovec) shall provide to area-co-rdinator of SPA once in week information pertaining to upcoming service visits at SPA's customers, for service mentioned under clause 1 (a) to (d); Timely submission of Service Charge Invoice & Commission Invoice to SPA's area co-ordinator; applicant (Stovec) shall take care about travel arrangement for the Indian technician in general as well as for technicians from Austria for the visit in India; Applicant (Stovec) will send technicians to SPA on a regular basis for training. SPA will arrange training for technicians once in a year and based on the content of the training, the requirement of attendance (no. Of days) to be decided on mutual consent basis; applicant is required to maintain Stock of parts and consumables in order to provide adequate services for SPA's machine,. Applicant must purchase all consumables/parts from SPA (It is not allowed to purchase locally); Prices for end customer must be in line with SPA Global Price list. The final price to the customer shall include import duties and other local charges over and*

above the SPA GLOBAL price list (Landed cost to customer should be the same, regardless if SPA delivers directly to customer or Stovec delivered to customer). The entire gamut of the activities performed by the Appellant as mentioned in the agreement shows that applicant is completely working as per the instruction and recommendation of SPG Print (SPA) in all the cases either in case of providing services to the customer, schedule of services to be provided, training of employee of customer's employee, or purchase of parts & consumables from SPG Print (SPA) only, maintaining of stock of parts & consumables, timely submission of service and **commission Invoice** to SPA's area co-odinator, price of parts and consumables in line of SPA Global price. The above clause of agreements clearly states that the applicant is facilitating and arranging services on behalf of SPA to the SPA's customer in India. Hence this is clearly in line with the definition of the term "intermediary" who is a person who facilitates the supply of goods or services or both, between two or more persons.

77. The applicant has contended that they are providing service on their own account and not on behalf of SPA. To examine the said argument we refer the last condition of the definition of "intermediary" as given in Section 2(13) of the IGST Act 2017 excludes a person who supplies such goods or services or both on his own account. It would be worthy to analyze the definition of the term "intermediary services" under the GST regime and pre-GST regime. Both the definitions have been mentioned below :

Under pre-GST regime	Under GST regime
Rule 2(f) of the Place of Provision of Services Rules, 2012	***Section 2(13) of Integrated Goods and Services Tax Act, 2017 (IGST Act)***
"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account	*"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*

77.1 From the above definitions, in essence, there does not seem to be any difference between the meaning of the term "intermediary" under the GST regime and pre-GST regime. In the pre-GST regime, an intermediary referred to a person who facilitates the provision of a *main* service between two or more persons but did not include a person who provided the *main* service on his account. Similarly, in the GST regime, an intermediary refers to a person who facilitates the supply of goods or services or both between two or more persons but excludes a person who supplies *such* goods or services or both on his own account. The phrase 'such goods or services' used in the definition of 'intermediary' implies that the person should not be supplying on his risk and reward entirely, the very goods or services whose supply he is arranging or facilitating. In the instant case, the Appellant is arranging and facilitating the

SPA's Indian customer by supplying the service of installation/ upgradation of machines on behalf of and as per the instruction of SPA. If a person either 'facilitates' or alternately 'arranges' any supply of goods or services (or both), between two or more persons, and does not supply such goods or services (or both) on his own account, he would be regarded as an 'intermediary'. From the agreement clause it is ample clear that parts/ consumables of the machine are purchased by the applicant only from SPA and supply the same in the line of Global price of SPA also SPA is providing training to the applicant staff to execute the work as per the instruction and on behalf of the SPA. This clearly shows that the Appellant is clearly facilitating the supply of the service on behalf of the SPA directly to the client's customers in the territory of India and is not supplying such services on his own account. Therefore, the Appellant does not fall within the ambit of the exclusion part of the definition of "intermediary.

78. The argument of the applicant that he received fixed consideration based on number of hours spent and they do not negotiate on behalf of SPA hence he cannot be termed as intermediary. The said contention of the applicant is examined and it is seen clearly in the definition of intermediary that there is no qualification that needs to be satisfied other than arranging or facilitating the supply of goods or services to be called intermediary. The consideration may be based on the number of hour's spent or any other method and this does not have bearing on the nature of supply. There is nothing in the definition to state that if the person supplying the service receives the consideration other than as commission or brokerage that would make exclude him from being an intermediary. Further, there is nothing in the definition that if applicant does not negotiate on behalf of principal would not covered as an "intermediary". Hence both the argument of the applicant cannot be considered favorably.

79. The argument of the applicant that he is not compensated in the form of brokerage/commission and amount paid to applicant is not some percentage of amounts to be received by SPA but it is an agreed amount based on hour spent for providing service hence he cannot be termed as intermediary. The said contention of the applicant is examined and **we find that in the agreement clause of *"Service Charge"* it is mentioned that, "*Stovec shall also be entitled to receive commission of 5% on sold service contracts in India for the above mentioned machines. For this purpose, SPA will send a quarterly commission overview."*** Also in the clause "Obligation of Stovec" it is mentioned that, "***Timely submission of Service Charge Invoice & Commission Invoice to SPA's area co-ordinator".*** It can be seen in the agreement itself it is mentioned that applicant receive the commission of some percentage from SPA and SPA will send a quarterly commission overview to the applicant. Hence

applicant is receiving the commission from SPA and their claim that they are not receiving any brokerage/commission is false and misleading. This clearly shows that applicant is getting some percentage of commission and arguments of the applicant do not hold water. Further, there is nothing mentioned in the definition of "intermediary" about the "nature and type" of consideration to be received by the person who is acting on behalf of the principal to qualify as intermediary. Therefore, the applicant arguments of not receiving the commission do not affect the nature of work of facilitate and arranging of supply of service on behalf of SPA to their Indian Customer The type of consideration received is not a condition that would make the applicant to exclude him from the definition of "intermediary" .

79.1 Hence in view of the above discussion we members are of the view that applicant specified transactions are squarely covers under the definition of "intermediary" as defined under Section 2(13) of the IGST Act, 2017.

80. The applicant has taken the support on the various decisions of the advance ruling authorities of the erstwhile service tax regime have been examined and analyzed and it is found that are all related to the service tax era and has no applicability during the GST regime. Hence the same needs to be verified in light of the GST Act.

81. We also rely on the following Rulings of Advance Authority, which are squarely applicable in the instant case:

(i) Karnataka Advance Authority in case of M/s. **MCAFEE SOFTWARE (INDIA) PVT. LTD** {Advance Ruling No. *KAR ADRG 56/2019*, dated 19-9-2019} has held that,

"*Intermediary Service - Scope of - Supply by subsidiary in India to principal located abroad - Applicant pleading that since he is supplying services on principal to principal basis and not as a broker or as an agent, he is not covered as intermediary service supplier - Said contention not acceptable inasmuch that definition of intermediary service, not only incudes a broker or an agent but also any other person qualifying to be intermediary by acting as facilitator in supply between two persons - Nothing in definition of intermediary services excludes a facilitator working on principal to principal basis - Manner of receipt of consideration at cost plus basis and not as commission is also not relevant - Decisions relied by applicant based on ejusdem generis are in respect of other names and not in respect of other persons and hence not applicable - Since applicant is not supplying services on his own account but only facilitating supply between two persons, he is an intermediary service provider - Section 2(13) of Central Goods and Services Tax Act, 2017."*

(ii) Karnataka Advance Authority in case of M/s. : INFINERA INDIA PVT. LTD. {Advance Ruling No. KAR/AAAR-09/2019-20, dated 20-1-2020} has held that,

Intermediary Service - Pre-sale and marketing service provided by Appellant of the products of overseas client - Infinera US, in a "liaison capacity" is in the nature of facilitating the supply of the products of overseas client and not supplying such goods on his own account - Appellant's service not falling within the ambit of exclusion clause but appropriately

classifiable as an "intermediary service' as defined under Section 2(13) of Integrated Goods and Services Tax Act, 2017, there being no difference between the meaning of the term "intermediary" under the GST regime and pre-GST regime. [paras 19, 22, 23, 25]

Intermediary - Meaning under Section 2(13) of Integrated Goods and Services Tax Act, 2017 - Intermediary is a person between the supplier and the recipient who arranges or facilitates the supply for a commission - Terms 'broker' and 'agent' being fundamentally different and not forming any category or class, phrase 'any other person, by whatever name called' cannot draw its colour from the preceding words which are altogether different - Principle of ejusdem generis and Noscitur a sociis not applicable - A general understanding of the term 'arranging' or 'facilitation' would cover a very wide range of activities ranging from marketing or sales promotion of the goods or services of client, locating prospective buyers for client's products or locating sources of supply of goods or services required by client, price negotiation with the prospective buyer/prospective supplier, procuring sales orders in respect of goods or services of the client and like activities.

81.1 On careful reading of the above Rulings of Advance Authority it is observed that they are squarely applicable in the applicant case. In view of the said Rulings, it can be concluded that applicant's activity falls within the ambit of "intermediary" as defined under Section 2(13) of IGST Act, 2017.

82. We take up the **fourth question** of the applicant that whether the specified transaction qualifies to be "Export of service" as per Section 2(6) of The Integrated Goods and Services Tax Act, 2017 or otherwise. In this regard Hon'ble High Court of Kerala in the case of M/s.SUTHERLAND MORTGAGE SERVICES INC. Versus PR. COMMR. OF CUS., CGST & C. EX., KOCHI Reported in ELT 2020 (35) GSTL 40 (ker.) has held that,

> *"**Export of Services** - Hyper technical view taken by AAR not to admit at threshold application seeking advance ruling on subject of export of services on the ground that it involves issue relating to place of supply not enumerated in Section 97(2) of Central Goods and Services Tax Act, 2017 - **While it is true that there is no specific mention of term 'Place of Supply' in any of clauses from (a) to (g) of Section 97(2) ibid, clause (e) of said Section on 'determination of liability to pay tax on goods or services or both' is wide enough to cover all aspects relating to levy of GST** -Thus, any question as to whether a supply is zero-rated or not would ultimately mean whether supply is leviable to GST or not - Making clause (e) wider as compared to other pigeon hole clauses of Section ibid, legislator's intention is clear and tax authorities have to take correct prospective on issues relating to export of services - In this era of globalization, foreign investors also require certainty and precision on tax liability **- In view of above, held that AAR has jurisdiction to address aforesaid issue** - Impugned order set aside and matter transferred to AAR to admit application, hear it and pronounce ruling under Section 98(4) ibid on merits within 3-4 months - Section 97(2) of Central Goods and Services Tax Act, 2017 - Article 226 of Constitution of India."*

Accordingly, in view of judicial prudence we members of the Authority proceed to decide the issue of Export of Service.

83. To decide whether the specified transaction is export of service we have to refer Section 2(6) of IGST Act, 2017 vide which the expression export of service has been defined. Section 2(6) of IGST Act, 2017 is read as under:

(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;

84. The applicant specified transaction if satisfies all the above five conditions as defined under Section 2(6) of IGST Act, 2017 then it can be concluded that the applicant specified transaction is export of service.

85. The first condition is satisfied as such the supplier of service is M/s. Stovec Industries who is a located in India. The second condition that recipient of service should be located outside India. The recipient of service has already been discussed in detailed in reply of question No. 2 and it is concluded that recipient is Indian customer to whom service is supplied in India. Hence second condition is not satisfied. The third condition that place of supply of service should be outside India. This has already been discuss and concluded with regard to question No. 3 above that for the specified transaction applicant is qualified as "Intermediary" in terms of Section 2(13) of IGST Act, 2017. Further place of supply for "intermediary" is defined under Section 13(8) of IGST Act which is read as under:

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

(a) ----------

(b) intermediary services;

86. Hence the place of supply of service for specified transaction is India and not Out of India in terms of Section 13(8) of IGST Act, 2017. Hence third condition is not satisfied. The fourth condition that supplier of service should received payment in convertible foreign currency has satisfied as such in the agreement it is mentioned that service charges will be paid in Euro by SPA to Stovec Industries. The fifth condition is also not satisfied as such the Stovec Industries is a holding company of SPA and not establishments of a distinct person in terms of E*xplanation* 1 to section 8 of the IGST Act, 2017.

87. Hence in view of above we members of the authority conclude that the specified transaction do not qualifies the export of service because all the

conditions which are stipulated under Section 2(6) of IGST Act, 2017 are not satisfied which is the foremost requirement for any transaction to be qualified "Export of Service".

88. In view of the foregoing, we rule as follows :

RULING

Question 1. Whether, in the facts and circumstances, the specified transaction of the Applicant should be categorized as individual supply or composite supply of service as per the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017?

Answer : The specified transaction of the Applicant is a composite supply of service as per the Central Goods and Services Tax Act, 2017 in view of the discussion herein above.

Question 2. Whether, in the facts and circumstances, the specified transaction of the Applicant is to be reckoned as being provided to SPA or to the customers of SPA located in India?

Ans. The person i.e. Indian customer to whom service is supplied in India in terms of the above discussion.

Question 3. - Whether, in the facts and circumstances, the specified transaction of the Applicant could be categorized as that of an "intermediary" as per Section 2(13) of The Integrated Goods and Service Tax Act, 2017?

Ans : The specified transaction of the Applicant is categorized as an "intermediary" as per Section 2(13) of The Integrated Goods and Service Tax Act, 2017

Question 4. - Whether, in the facts and circumstances, the specified transaction qualifies to be "Export of service" as per Section 2(6) of The Integrated Goods and Services Tax Act, 2017?

Ans. Negative as per the above discussion.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad
Date: 17.09.2020.