

**THE AUTHORITY FOR ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU – 560 009**

**Advance Ruling No. KAR ADRG 12/2022**

**Date : 21-04-2022**

Present:

**1. Dr. M.P. Ravi Prasad**

Additional Commissioner of Commercial Taxes

. . . . Member (State)

**2. Sri. T. Kiran Reddy**

Additional Commissioner of Customs & Indirect Taxes

. . . . Member (Central)

1.	Name and address of the applicant	M/s IBI Group India Pvt. Ltd., # 241, 3, 6 <sup>th</sup> Cross, 1 <sup>st</sup> Stage, Binnimangala, Indiranagar, Bengaluru-560038
2.	GSTIN or User ID	29AABCI5556K1Z5
3.	Date of filing of Form GST ARA-01	17-12-2021
4.	Represented by	Sri. Abhishek Mishra, C A & Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru. (Range-BED3)
6.	<b>Jurisdictional Authority – State</b>	ACCT, LGSTO-45, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Cash Ledger vide reference number DC2911210018828 dated 06.11.2021.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017  
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. IBI Group India Pvt. Ltd., # 241, 3, 6<sup>th</sup> Cross, 1<sup>st</sup> Stage, Binnimangala, Indiranagar, Bengaluru-560038, having GSTIN 29AABCI5556K1Z5, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.



# IBI Group India



2. IBI Group India Private Limited ("**IBI India**"), in joint venture with IBI Group Professional Services (Canada) Inc ("**IBI Canada**"), has entered into a Contract with Asian Development Bank, Manilla ("**ADB**") for rendering Consultancy Services (IBI India and IBI Canada are jointly referred to as "**IBI**" herein).

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a) Whether Consultancy Services rendered to ADB, Manilla would qualify as "export of services" in terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act")?
- b) If the Consultancy Services rendered to ADB, Manilla do not qualify as "export of services", whether ADB would be required to obtain refund of GST charged on Invoice issued for Consultancy Services in terms of Section 55 of the Central Goods and Services Tax Act, 2017 ("CGST Act") or the services would be exempt as per provisions of the Asian Development Bank Act, 1966 ("ADB Act")?

4. **BRIEF FACTS OF THE CASE:** The applicant furnishes the following facts relevant to the issue:

4.1 The Consultancy Services, broadly, envisage multifarious study to conceptualise a transit-oriented development plan in respect of construction of new metro lines, phases 2A and 2B, with a total length of 56 km including 30 stations and three depots, at Bengaluru, Karnataka. In this regard, the construction of new metro lines would be undertaken by Government of Karnataka, for which Government of India requested ADB for financial assistance.

4.2 The Consultancy Services or Technical Assistance support in respect of creating a viable vision document, having intertwined objectives of developing public mass transport systems for Bengaluru city and its urban planning, is purported to encapsulate the following:

- (i) Prioritizing integrated and systemic urban planning to manage growth, catalyse strategic renewal of the city core, and enhance competitiveness, sustainability and inclusiveness of the city.
- (ii) Creation of a ridership base that improves the economic and financial viability of mass transit investment.
- (iii) Accessibility benefits of a comprehensive public transport system for all city residents.
- (iv) Using land as a revenue Source to finance long term investment needs of the city.

Addressing complex and intertwined economic and technological needs.





## 5. Applicant's Interpretation of Law:

### 5.1 Export of Services

5.1.1 As per Section 16 (1) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act"), "export of services" qualifies to be "zero rated supply", which means that there would be no levy of GST on services qualifying as "export of services".

5.1.2 For qualifying as "export of services", specific conditions, as provided under Section 2(6) of the IGST Act, should stand fulfilled. The said conditions and whether such conditions are fulfilled vis-à-vis the present facts is discussed in the table below:

Sl No.	Conditions for qualifying as "export of services"	Whether the conditions are fulfilled in the present set of facts
1	The supplier of Service is located in India	Since IBI is located in India, this condition should stand fulfilled.
2	The recipient of Service is located outside India	Since ADB is located outside India, this condition would also stand fulfilled
3	The place of supply of service is outside India	Refer subsequent paragraphs for discussion on this aspect.
4	The payment for such service is received in convertible foreign exchange	The payment for services is to be made in USD. Accordingly, this condition would be fulfilled.
5	The supplier of service and the recipient of service are not merely establishment of distinct person	This condition would also be fulfilled in the instant case.

5.1.3 It emerges that if place of supply of services rendered by IBI to ADB emerges to be outside India, such supply of services would qualify to be "export of services". In this regard, Section 16 of the IGST Act lays down the criteria for determining the "place of supply" of services in cases where location of recipient (i.e. ADB in the instant case) is outside India. Section 13(2) of the IGST Act lays down the default rule that "place of supply" of services would be location of recipient of service except in cases enlisted under Section 13(3) to 13(13) of the IGST Act. In this regard, Section 13(4) of the IGST Act provides as follows:

"The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-





ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located”

5.1.4 Given that the Consultancy Services are proposed to be rendered in respect of the construction of new metro lines, which may be construed to be services in relation to “immovable property”, it may be contended that the “place of supply” of services rendered by JV India would be Bengaluru i.e. within India. Accordingly, such services would not qualify as “export of services” and hence taxable @ 18%. However, Section 13(4) of the IGST Act provides that the services should be “*directly in relation to an immovable property*”, whereas in the present case the technical assistance support services proposed to be rendered by JB India is a feasibility study and holistic planning of the public mass transit system involving new metro rail lines. The term “*directly in relation to immovable property*” means that the nexus between the proposed services and the immovable property is distinct and clear. If the service in question are remotely related to or are indirectly related to the immovable property, it may not be legally plausible to construe “place of supply” of such service to be the location of immovable property in terms of Section 13(4) of the IGST Act.

5.1.5 In the instant Case, the scope of work of the technical assistance support, is largely related to planning transit-oriented development along mass transit corridors, strategic urban renewal of Bengaluru city etc. It emerges that the consultancy services are not merely related to construction or design of construction of new metro lines but are aimed at undertaking a pre-construction analysis of the public mass transit system involving a gamut of technical, social and economic factors. Accordingly, the services cannot be said to be directly in relation to the immovable property. Accordingly, the “place of supply” of such services would be determined as per Section 13(2) of the IGST Act i.e. the place of supply of services would be location of recipient services / ADB, which is outside India.

5.1.6 Hence, the condition of “place of supply” being outside India for qualifying as “export of services” should also get fulfilled in the instant case. Consequently, services rendered by IBI to ADB should qualify as “export of services”.

## 5.2 Refund to be obtained by ADB or Exempted Services

5.2.1 Section 55 of the CGST Act read with Notification 16/2017-Central Tax (Rate) dated 28 June 2017 (“GST Notification”) and Rule 95 of the CGST Rules provides that specified multilateral Financial Institution and Organization (which includes ADB) would be entitled to claim a refund of taxes paid on the notified supplies of services received by them. Section 55 is reproduced below for ease of reference:





“55. Refund in certain cases.

*The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.”*

5.2.2 The Government of India has issued a Circular for clarifying its stand in respect of applicability of GST on ADB. In Circular No. 83/02/2019- GST dated 1<sup>st</sup> January 2019 (“GST Circular”), it is stated as follows:

*“2. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the Bank, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties. The Bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty [Section 5 (1) of the ADB Act, 1966 read with Article 56 (1) of the schedule thereto refers]...*

*3. CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. Has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.*

*4. Accordingly, it is clarified that the services provided by ... ADB are exempt from GST in terms of provisions of ...ADB Act. The exemption will be available only to the services provided by ADB... and not to any entity appointed by or working on behalf of ADB...*

5.2.3 On the other hand, reference should be made to the Asian Development Bank Act, 1966 (**“ADB Act”**) which implements the international agreement for the establishment and operation of the Asian Development Bank and provides for matters connected therewith. Section 5 of the ADB Act provides as follows (relevant extracts only):





(1) Notwithstanding anything to the contrary contained in any other law, the provisions of the Agreement set out in the Schedule shall have the force of law in India;

(a) Entitling the Bank to import into India goods free of any duty of customs without any restriction on their subsequent sale therein; or

(b) Conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold; or

(c) Conferring on the Bank any exemption from duties or taxes which are in fact no more than charges for services rendered."

## EXEMPTION FROM TAXATION

- 5.2.5 As per the aforesaid provisions of the ADB Act, the services rendered by IBI should be exempt, whereas in terms of the Section 55 of the CGST Act read with GST Circular, it emerges that such services should not be exempt and ADB should obtain refund of the GST paid by it to IBI from Government. Please clarify on the aforesaid aspect basis which IBI would decide whether it is required to charge GST on its invoice issued to ADB.

6. The Joint  
Bengaluru, v  
# IBI Group India



question raised by the applicant in the instant application, inter alia stating that “as per Section 2(6) of the IGST Act 2017, place of supply of service has to be determined for qualification of any service to be an export of service and determination of place of supply of service is not within the scope of Advance Ruling Authority, in terms of Section 97(2) of the CGST Act 2017. Further the Joint Commissioner also quoted the following rulings in support of their views.

- a) M/s Workplace Options India Pvt. Ltd., - Advance Ruling No.KAR ADRG 52/2021 dated 29.10.2021
- b) M/s Sabre Travel Network India Pvt. Ltd.,-2019 (27) G.S.T.L. 754 (AAAR-GST)
- c) M/s Asahi Kasei India Pvt. Ltd.,-2019 (28) G.S.T.L. 172 (AAAR-GST)

### **PERSONAL HEARING PROCEEDINGS**

7. Sri Abhishek Mishra, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings, held on 10.02.2022, through video conference, and reiterated the facts narrated in their application.

8. The applicant vide their e-mail dated 12.01.2022, furnished additional submissions, inter alia stating as under:

8.1 The applicant pursuant to personal hearing held on 06.01.2022 requested for leave to file additional submissions on specific points raised during the personal hearing, which was granted by the authority and thus the additional submissions were filed, which are summarized as under:

8.2 The Hon'ble authority, during the personal hearing, expressed its inability to provide the ruling in respect of query raised in respect of “place of supply” of services and “export of services” rendered by the applicant to ADB, as being sans Hon'ble Authority's jurisdiction as per CGST Act 2017.

8.3 In this regard it is respectfully submitted that adjudicating upon the query related to “export of services” / “place of supply” is well within the jurisdiction of Hon'ble Authority in terms of Section 95(a) read with Section 97(2) of the CGST Act.

8.4 The applicant has sought clarification as to whether their services would qualify as “export of services” in terms of Section 2(6) of the IGST Act 2017. It is required to determine whether conditions for qualifying as “export of services” as laid down under Section 2(6) of the IGST Act are fulfilled in respect of the said services or not, one of which is the “place of supply” of the said services, whether it is in India or outside India. Thus to determine whether the said services would qualify as “export of services” or not it is essential to decide the “place of supply” of the said services.





8.5 If the authority determines the “place of supply” of said services as outside India, then the applicant would not be required to pay GST on the said services, as being “zero rated supply”. In effect, the authority would determine the liability of the applicant to pay tax on services, which is squarely within the power of “determination of the liability to pay tax on any goods or services or both, in terms of Section 97(2)(e) of the CGST Act.

8.6 The above averment finds support in judgement of Hon’ble Kerala High Court in the case of Sutherland Mortgage Services INC Vs. Principal Commissioner and others 2020 (3) TMI 186, wherein it is held that it is true that the issue relating to the determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 97(2) of the CGST Act, but there can’t be any two arguments that the said issue relating to the determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfills the definition of place of service, would also come within the ambit of the larger issue of “determination of liability to pay tax on any goods or services or both” as envisaged in clause (e) of Section 97(2) of the Act. The Advance Ruling Authority has proceeded on a tangent and has missed the said crucial aspect of the matter and has taken a very hyper-technical view that it does not have jurisdiction for the simple reason that the said issue is not expressly enumerated in Section 97(2). The applicant brought out the observations of the Hon’ble High Court of Kerala, in para 21 of the said judgement.

8.7 The Advance Ruling Authorities of various states have adjudged and clarified on the similar matter in several instances, notable few of which are enumerated as under:

1. AAR, Maharashtra’s ruling GST-ARA-20/2019-20/B-59 dated 15.12.2021, in the matter of M/s Preeti Automotive India Pvt. Ltd.,
2. AAR, Maharashtra’s ruling GST-ARA-30/2018-19/B-92 dated 20.08.2018, in the matter of M/s Segoma Imaging Technologies India Private Limited.
3. AAR, Andhra Pradesh’s ruling 04/AP/GST/2020 dated 24.02.2020, in the matter of M/s DKV Enterprises Pvt. Ltd.,
4. AAR, Gujarat’s ruling GUJ/GAAR/R/70/2020 dated 17.09.2020, in the matter of M/s Stovec Industries Ltd.,
5. AAR, West Bengal’s ruling 02/WBAAR/2017-18, in the matter of M/s Global Reach Education Services Pvt. Ltd.,

8.8 It is apparent that Hon’ble Advance Ruling Authority should answer the question related to “export of services” raised by the Applicant, in terms of Section 97(2) of the CGST Act. In this regard, it is reiterated that the services rendered by IBI to ADB should qualify as “export of services” as “place of supply” would be determined in terms of Section 13(2) of the IGST Act i.e. the “place of supply” would be outside India. It is because the services of IBI are not directly in relation to immovable property. The services in question involve advisory/





consultancy in relation to holistic planning of the growth-oriented transport system in the city of Bengaluru. In this regard, CBEC Educational Guide issued in the month of June 2012 in para 5.5.2 highlighted the meaning of the words “directly in relation to the immovable property” in respect of similar provision under erstwhile Service tax laws (i.e. Chapter V of the Finance Act, 1994 as it existed at that point in time) and provide as follows:

*“There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm’s general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.*

.....

*The place of provision of services rule applies only to service which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property. Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.”*

8.9 It is submitted that the services of IBI can only be construed to be remotely related to an immovable property which is not identifiable at present, and it is not related directly to specific sites of land or property but to Bengaluru city per se. At this juncture, it is also worthwhile to refer to Section 13(4) of the IGST Act. The relevant part of the said section is **“The place of supply of services supplied directly in relation to services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located”**, from which it would emerge that services of IBI are not directly related to any specific immovable property, whether present or upcoming. Further, the services of IBI are not purported to be in relation to **“carrying out or co-ordination of construction work.”** Accordingly, “place of supply” of services of IBI rendered to ADB would have to be determined as per Section 13(2) of the IGST Act i.e. *“The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.”* As a consequence, services rendered by IBI to ADB should qualify as “export of services” as the recipient of said services/ADB is located outside India.





8.10 It is also submitted that IBI is an "Applicant" in terms of Section 95(c) of the CGST Act and its application for seeking advance ruling, is required to be adjudged and clarified by Hon'ble Advance Ruling Authority.

### **FINDINGS & DISCUSSION**

9. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

10. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant and the submissions made by their learned representative during the time of hearing.

11. The Applicant, has entered into a Contract with Asian Development Bank, Manilla for rendering Consultancy Services which broadly envisage multifarious study to conceptualise a transit-oriented development plan in respect of construction of new metro lines, phases 2A and 2B, with a total length of 56 km including 30 stations and three depots, at Bengaluru, Karnataka. In view of this, the applicant sought advance ruling in respect of questions mentioned at para 3 supra.

12. The first question is "Whether Consultancy Services rendered to ADB, Manilla would qualify as "export of services" in terms of Section 2(6) of the IGST Act 2017". In this regard we invite reference to Section 2(6) of the IGST Act 2017, wherein "export of services" has been defined as under:

*2(6) —export of services means the supply of any service when,—*

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India] 2 ; 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;*





13. It could be seen that for a service to qualify as “export of service” it has to satisfy the conditions enumerated under Section 2(6) of the IGST Act, 2017, one amongst them is “place of supply of service” which has to be outside India.

13.1 The issue before the authority now is to decide whether the Authority of advance ruling can determine the place of supply. In this regard, the applicant has claimed that the determination of place of supply would in effect decide whether a service qualifies as export of service or not. This would in turn determine the liability of the applicant to pay the tax on services, which is squarely within the power of “determination of the liability to pay tax on any goods or services or both” in terms of Section 97(2)(e) of the CGST Act. The applicant has also cited the judgement of Hon’ble Kerala High Court in the case of Sutherland Mortgage Services INC Vs. Principal Commissioner and others 2020 (3) TMI 186, to support his case.

13.2 In order to examine the issue in detail, reference is invited to the provisions of KGST Act, 2017 and CGST Act, 2017 with regards to the constitution of the Authority of advance ruling, definition of advance ruling and the questions on which advance ruling can be sought. The Karnataka Authority of Advance Ruling is constituted under Section 96 of the KGST Act, 2017 as under-

*“96. Constitution of Authority for Advance Ruling.- (1) The Government shall, by notification, constitute an Authority to be known as the Karnataka Authority for Advance Ruling:*

*Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.*

*(2) The Authority shall consist of-*

*(i) one member from amongst the officers of central tax; and*

*(ii) one member from amongst the officers of State tax,*

*to be appointed by the Central Government and the State Government respectively.*

*(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.”*

Further Section 96 of the CGST Act, 2017 states that the Authority for advance ruling constituted under the State Act, shall be deemed to be the Authority in respect of the CGST Act, 2017 also. The provision is reproduced as under-

*“96. Authority for advance ruling — Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.”*

From the above it is seen that the Authority for advance ruling is constituted under the provisions of the State GST Act and shall be deemed to be the Authority for





advance ruling in respect of that State under the CGST Act, 2017 also. Thus it can be seen that the Authority for advance ruling is constituted under the respective State Act and not the Central Act. This would mean that the ruling given by the said Authority will be applicable only within the jurisdiction of the concerned state. It is for this reason that questions on determination of place of supply cannot be raised with the Authority of advance ruling.

13.3 We also invite reference to the definition of 'advance ruling' in Section 95(a) of the CGST Act, 2017 as under-

*"(a) 'advance ruling' means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;"*

From the above, it is seen that advance ruling means a decision of the Authority on the matters or on questions specified in sub-section (2) of Section 97. The said sub-section stipulates the questions on which advance ruling can be sought as under-

*"(2) The question on which the advance ruling is sought under this Act, **shall** be in respect of,-*

*(a) classification of any goods or services or both;*

*(b) applicability of a notification issued under the provisions of this Act;*

*(c) determination of time and value of supply of goods or services or both;*

*(d) admissibility of input tax credit of tax paid or deemed to have been paid;*

*(e) determination of the liability to pay tax on any goods or services or both;*

*(f) whether applicant is required to be registered;*

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

It could be seen from the above that the determination of place of supply is not covered under any of the clauses (a) to (g) of Section 97(2) of the CGST Act 2017. Further, the use of term 'shall', is an imperative command restricting the scope of advance ruling only to the questions enumerated in the said sub-section. Thus, to answer the question relating to determination of place of supply, is beyond the scope of advance ruling. This authority, therefore, cannot answer the first question in the application.





13.4 The applicant contended that the Hon'ble High Court of Kerala, in the case of **Sutherland Mortgage Services Inc. Vs Principal Commissioner and others** held that "it is true that the issue relating to the determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 97(2) of the CGST Act, but there cannot be any two arguments that the said issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfills the definition of place of service, would also come within the ambit of the larger issue of "determination of liability to pay tax on any goods or services or both" as envisaged in clause (e) of Section 97(2) of the Act".

It could be seen from above that the Hon'ble High Court of Kerala held that determination of place of supply is one of the crucial issues and would come within the ambit of the larger issue of determination of liability to pay tax on goods or services or both. It is pertinent to mention here that the question before the Authority for Advance Ruling, Kerala was as under :

*"Whether supply of services by India branch of Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the intra company agreement entered into by the said branch with the principal company incorporated in USA?"*

It could be seen from above that the question is directly linked to the GST liability, whereas in the instant case the question is "Whether consultancy services rendered to ADB, Manilla would qualify as "export of services" in terms of Section 2(6) of the IGST Act 2017 ?". Thus the issue in the instant case is different to that of the question in the case of Sutherland Mortgage Services Inc. and hence the judgment supra is not applicable to the instant case.

13.5 The Hon'ble Appellate Authority for Advance Ruling, Karnataka have held, as under, in the case of M/s Eicher-Volvo Commercial Vehicles Ltd., Bengaluru.

*"23. The Authority for Advance Ruling and the Appellate Authority for Advance Ruling have both been constituted in exercise of the powers conferred under Section 96 and 100 of the Karnataka Goods & Services Act 2017, which Act extends to the whole of the state of Karnataka. The AAR and the AAAR are the creatures of the statute and have to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section 97(2) of the Acts, we refrain from answering this question of the Appellant with regard to 'export of service' on the grounds of lack of jurisdiction."*

Further the Hon'ble Appellate Authority for Advance Ruling, Karnataka have also confirmed the same views as above even in the case of M/s Toshniwal Brothers (SR) Pvt. Ltd., Bengaluru.

14. The second question is a conditional one and comes into existence only if the impugned services of the applicant do not qualify as "export of services". This





question becomes redundant as the first question cannot be answered by this authority. Therefore the instant application is liable for rejection for the reasons mentioned above.

15. In view of the foregoing, we pass the following

### **RULING**

*The application filed by the applicant for advance ruling is hereby rejected for the reasons mentioned above.*

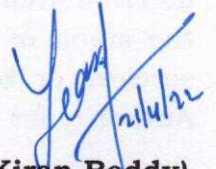


**(Dr. M.P. Ravi Prasad)**

**MEMBER**

Karnataka Advance Ruling Authority

Place : Bengaluru, Bengaluru - 560 009



**(T. Kiran Reddy)**

**Member**

**MEMBER**

Karnataka Advance Ruling Authority

Bengaluru - 560 009

Date : 21-04-2022

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-45, Bengaluru.
5. Office Folder.

