

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 31/2019

Date : 12-09-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

| | | |
|----|---|---|
| 1. | Name and address of the applicant | M/s Infinera India Pvt. Ltd., Prestige Solitaire, Level 4-401, #6, Brunton Road, Bengaluru - 560025 |
| 2. | GSTIN or User ID | 29AABCI1411R1ZD |
| 3. | Date of filing of Form GST ARA-01 | 16.05.2018 |
| 4. | Represented by | Sri Sivarajan.K, Authorised Representative |
| 5. | Jurisdictional Authority - Centre | The Commissioner of Central Tax, Bangalore East Commissionerate, Domlur, Bengaluru-71 |
| 6. | Jurisdictional Authority - State | LGSTO-20, Bengaluru |
| 7. | Whether the payment of fees discharged and if yes, the amount and CIN | Yes, discharged fee of Rs.5,000/- each under CGST Act & KGST Act vide CIN RBIS18052900064907 dated 15.05.2018 |

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017

1. M/s Infinera India Private Limited, (called as the 'Applicant' hereinafter), Prestige Solitaire, Level 4-401, 6, Brunton Road, Bengaluru - 560025, having GSTIN number 29AABCI1411R1ZD, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.



2. The Applicant is a private limited company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether the activities carried out in India by the applicant would render the applicant to qualify as an "intermediary" as defined under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (hereinafter "IGST Act, 2017") and consequently be subject to the levy of GST?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that he is a 100% Export Oriented Unit (EOU) under the Software Technology Park of India (STPI) scheme and is a wholly owned subsidiary of Infinera Corporation, USA (hereinafter "Infinera USA") and is registered under the Companies Act, 1956, with the Corporate Officer located at Bangalore.
- b. He is predominantly engaged in software development services, which included embedded and network management, technical documentation, systems verification testing and associated hardware design for the products developed by Infinera Corporation. In addition, the applicant also provides pre-sale marketing services for the optical networking equipment developed by Infinera Corporation.
- c. The present application is only pertaining to the pre-sales marketing services provided by the applicant and not the software development services.
- d. The primary business activities carried out by Infinera USA pertains to optical networking equipment, software products as well as installation and maintenance services. Infinera USA had engaged the applicant to provide pre-sale marketing services with regard to the optical networking equipments offered by Infinera USA.
- e. In furtherance of the said objectives, the applicant and the Infinera USA have entered into a "Pre-sale and Marketing Services Agreement dated April 1, 2011 (hereinafter "the Agreement"). The roles and responsibilities of the applicant as per the provisions of the Agreement are as below
 - i. Conducting marketing research in order to keep Infinera USA advised and informed regarding all matters in India, which may be of reasonable business interest or concern to India; and

- ii. Following up with customer leads provided by Infinera USA; which in turn involves two major aspects – one, making sales presentations; and two – educating potential customers about the benefits and salient features of the optical networking equipment offered by Infinera USA.
- f. The applicant has stated that with respect to its engagement with Infinera USA, the work carried out by the applicant is subject to the following limitations:
 - i. The only activities carried out by the applicant under the marketing services agreement are pre-sales and marketing services for the optical networking equipment;
 - ii. No activities pertaining to installation / post sales support or servicing etc. are carried out by the applicant;
 - iii. The applicant does not enter into negotiation of contractual terms and price with respect to the Infinera USA products sold to customers
 - iv. All decisions relating to pricing or commercial terms and conditions with customers are taken solely at the discretion of Infinera Corporation; and
 - v. The applicant gets compensated for the aforementioned activities irrespective of whether such activities lead to a sales order or not.
- g. Regarding the issues before the authority, the applicant argues that the activities carried out by the applicant do not qualify to be termed as “intermediary services”. The intermediary is defined under Section 2(13) of the IGST Act as under

“2(13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

He states that it is evident that there are three major aspects of the definition of the term “intermediary” under GST Law:

- (a) The person should be a broker, an agent or any other person, by whatever name called;



- (b) The person should arrange or facilitate the supply of either goods or services or both, or securities – between two or more persons; and
 - (c) A person who supplies such goods or services or securities on his own account shall not be covered under the ambit of the term “intermediary”.
- h. The applicant submits that he is not an agent as per the definition of the term given in Section 2(5) of the Central Goods and Services Act, 2017. He summarizes the character of a “broker” or a “commission agent” as
- i. Making of a contract for purchase or sale of goods or provision of service between two or more persons (for a broker)
 - ii. Acting on behalf of another and causing the sale or purchase of goods, or provision or receipt of services, for a consideration (for a commission agent); and
 - iii. Existence of a principal-agent relationship between the commission agent / broker and the buyer/seller.

The applicant provides services on his own account and not on behalf of Infinera USA or any other entity. Thus the services provided by the applicant are on a principal-to-principal basis and not in the capacity of an agent or broker. He highlighted the part of the contract agreement which reads *“IPL agrees that its relationship is one of an independent contractor and it will not act or represent that it is acting as an agent of Infinera or incur any obligation on behalf of Infinera. IPL shall not have the authority to make any commitments, whatsoever on behalf of Infinera, as an agent or otherwise, nor to bind Infinera in any respect. Without limiting the foregoing, IPL shall not have the authority to enter into contracts on behalf of Infinera, and maintain stock of goods or merchandise of Infinera”*.

The applicant claims that the marketing support services provided by the applicant are auxiliary in nature for Infinera USA and the applicant at no point in time has any authority to negotiate prices or to enter into / conclude contracts for or on behalf of Infinera USA; and the performance and remuneration of the applicant is in no way linked to the purchase prices; as the applicant, as per the agreement, receives compensation on a ‘cost plus basis’ – i.e. on the basis of cost

of expenses incurred for providing marketing support services in addition to a definite mark-up.

The applicant hence claims that it is evident that he cannot at any point of time be deduced to be an agent/ broker of Infinera USA. Therefore, the first requirement of any activity qualifying to be an intermediary service is not satisfied by the applicant in the instant case.

- i. The applicant submits that the expression “arranges or facilitate supply” as used in Section 2(13) of the IGST Act means to organize or support or assist in any manner the supply of goods or services or both in such a manner that such supply between two or more persons becomes easier or more convenient. The literal interpretation of the definition of “intermediary” appears to require actual arrangement or facilitation of supply of goods and/or services by an intermediary. This is because the definition contemplates two activities: the supply of goods and/ or services by one person and the provision of intermediary service by the intermediary to the said person. He also describes the concept of “commission agent” and states that an “intermediary” can only be a person who actually arranges or facilitates a main service – and not merely a person who markets a product belonging to the seller. A possible interpretation could be advanced that ‘an intermediary should mediate the actual supply of goods and not merely market the goods or services vis-à-vis a prospective customer’.

Hence the applicant claims that while an intermediary may undertake a whole host of marketing and sales promotion services as well, in order to fulfil his role as an “arranger” or “facilitator”, mere undertaking of marketing or sales promotion by an entity without any role in the actual arrangement or facilitation would not render such entity to be an intermediary in terms of definition provided under section 2(13) of the IGST Act.

- j. As per the applicant’s arrangement with Infinera USA, the primary responsibilities of the applicant include
 - i. Conducting market research in order to keep Infinera USA advised and informed regarding all matters within India
 - ii. Following up with customer leads provided by Infinera USA through sales presentations as well as educating potential



customers about the benefits and features of the optical networking equipment; and

iii. Provision of software development services

It is evident from the above that at no point of time does the applicant carryout any activity which may be deemed to be an act of facilitating or arranging a sale of the optical networking equipment between Infinera USA and the prospective customers. As no activities pertaining to installation or post-sales support or servicing of the optical networking equipment etc. are carried out by the applicant nor can the applicant enter into any negotiation of contractual terms and price with respect to the Infinera USA products with any prospective customers. In fact, all decisions pertaining to pricing or commercial terms and conditions with customers are taken solely at the discretion of Infinera USA.

Therefore, the applicant claims that the activities carries out by him cannot be held to ease out, make convenient, arrange or facilitate the supply of any goods and/or services between Infinera USA and its prospective customer and hence this requirement under the definition of "intermediary" is also not satisfied.

- k. The applicant states that he always provided pre-sale and marketing support services as well as software services on his own account and all activities are carried out by the applicant on a Principal-to-Principal basis with respect to Infinera USA. The agreement also treats specifically the applicant and the Infinera USA as Principals. In addition, the applicant receives consideration on cost plus basis and not related to the sales figures of the products. Hence it is reasonable evident that the activities performed by the applicant are in the nature of marketing services performed on its own account and not as an intermediary. Therefore the third requirement contained in the definition is also not satisfied by the applicant and hence the applicant does not qualify as an "intermediary" and consequently, its activities cannot be classified as "intermediary services" for the levy of GST.
- l. The applicant has placed reliance on the Order of Advance Ruling issued by the Hon'ble Authority for Advance Rulings under the erstwhile Service Tax Law in the following cases -
- i. *GoDaddy India Web Services Pvt Ltd, and*
 - ii. *The Universal Services India Pvt Ltd*

The applicant contends that the definition of “intermediary” envisages an actual arrangement or facilitation of supply of goods or services or both by an intermediary and does not refer to merely persons who engage in the marketing of a product which is offered by a seller, it may be understood that merely engaging in promotion or marketing of a particular product does not, by any stretch of imagination, imply that there is an actual arrangement being made or a facilitation being offered with respect to the supply of such goods or services or securities, as the case may be. The applicant has always been solely conducting preliminary market study / research and providing such information to Infinera USA. He has always been responsible solely for following up with customer leads provided by Infinera USA, in the form of sales presentations, customer education about the features of the offered products etc., with no rights to enter into contracts on behalf of Infinera USA. Even the payments earned by the applicant are on a cost-plus basis.

- m. The applicant further states that in situations where either the provider or recipient of a service is located outside India, then the place of supply shall be determined as per the provisions of Section 13 of the IGST Act and Section 13(8)(b) ibid specifies that the location of the supplier of service shall be the place of supply for such service. However, since the applicant cannot be held to be supplying “intermediary services” on account of the various submissions made there is no question of levy of GST in the instant case.

4. The applicant was heard, and he has submitted additional submissions as under:

- a. The applicant declares that the pre-sales marketing services has not resulted in sale of telecommunication equipments by Infinera USA to any customer in India till date and he also stated that the applicant conducts preliminary market study/ research and provides information of business concern to Infinera USA. Thereafter, Infinera USA team gets in touch with the prospective customers and carries out host of activities, which inter-alia includes the following-
 - i. Requirement analysis: The telecommunication equipments sold by Infinera USA are highly technology oriented and involve assessment of the exact requirements of the customer and suggesting products as per customer’s needs

- ii. Request for Proposal (RFP): As a next step, customers request for proposals from various suppliers, Infinera USA takes part in the bidding process.
- iii. Supply of networking equipments: In a scenario the customers select Infinera USA's product to be supplied, Infinera USA would supply the goods to customers in India directly.
- iv. Installation: The goods supplied would require installation by technical experts
- v. Integration: The networking equipments would also require to be integrated to be fully operational and work as intended.

As can be seen from the above, all the aforementioned activities require specialized knowledge, which is available with Infinera USA team. The applicant is involved merely in pre-sales marketing and promotion activities and not in facilitating the aforesaid activities. Further the applicant does not have the capability to even facilitate the aforesaid technical activity and in fact has a team of only four employees having expertise in the marketing field.

- b. The applicant reiterates that he does not enter into any negotiation of contractual terms and price of Infinera USA products to be sold to the customers. For the activities of the applicant, the applicant gets compensated on a cost-plus basis irrespective of whether or not the marketing carried out by Infinera India leads to a sales order or not.

PERSONAL HEARING / PROCEEDINGS HELD ON 29.05.2018.

- 5. Sri Sivarajan K, authorised representative of the applicant appeared for personal hearing proceedings held on 29.05.2018 & reiterated the facts narrated in their application.

6. FINDINGS & DISCUSSION:

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Sivarajan K, authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

6.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act 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 same provisions under the KGST Act.

6.3 The submissions of the applicant are examined and the main issue to be decided is whether the applicant is covered under the definition of "intermediary" as per section 2(13) of the IGST Act, 2017.

6.4 "Intermediary" is defined in Section 2(13) of the IGST Act, 2017 and the same reads as under:

"2(13) 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

(a) The aforementioned definition of an 'intermediary' as per Section 2(13) of the IGST Act, requires that a person must satisfy the following conditions to be termed as an intermediary.

(i) He must be a 'broker' or an 'agent' or 'any other person by whatever name called', who arranges or facilitates the supply of goods or services or both or securities'.

(ii) The supply arranged or facilitated must be between two or more persons.

(iii) He is not the person who supplies such goods or services or securities on his own account.

(b) The applicant has strenuously attempted to draw reference to the characteristics of a broker and a commission agent to conclude that an intermediary has to meet the tests of a broker and a commission agent. The terms 'broker' and 'agent' are fundamentally different, a broker being a middleman whose job is to act as the meeting point between two or more people whereas an agent acts on behalf of the Principal, yet these terms have been used together in the definition of an intermediary. This shows that a person can be far away from being an agent or a broker and yet qualify to be considered as an intermediary. This view is amply supported by the definition itself

which stipulates that an intermediary would not only be a person who is a broker or an agent but also 'any other person, by whatever name called'. The use of the expression 'or any other person, by whatever name called' tends to delimit the scope of the intermediary to apply only to broker or an agent. Here we would like to stress that the applicant's insistence on applying the rule of *Noscitur a sociis* to certain words/phrases used in Section 2(13) of the IGST Act is not appropriate. It is an accepted fact that GST is destination based tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. 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 and are not substitutes for each other. In addition, the third part of the definition expands rather than limits the meaning of who an intermediary is to one who is only an agent or a broker. Therefore the applicant's assertion that they do not qualify to be treated as an intermediary on account of not meeting the characteristics of an agent or a broker is ill founded and we are not convinced to accept the argument.

- (c) Next we consider the import of the words 'arranges' and 'facilitates' as they appear in the cited definition of an intermediary. The terms 'arrange' and 'facilitate' have not been defined in the Act. In common parlance the 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).

This conveys that 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 the client, locating prospective buyers for the client's products or locating sources of supply of the goods or services required by the client, price negotiation with the prospective buyer/prospective supplier, procuring sales orders in respect of the goods or services of the client and like activities. This general understanding of the two terms has to be applied to the instant case to see what emerges from the same.

(d) We now apply the aforesaid general understanding of the said terms to the instant case. The Statement of Work, Attachment 'A' to the Pre-Sales and Marketing Agreement delineates the 'Project Scope' as comprising of activities of (1) assisting Infinera through the coordination of sales promotion and advertising for its products in India, (2) conduct market research and keep Infinera advised and informed regarding all matters within India, which may be of reasonable business interest or concern to India and (3) provide informational, educational and service programs in India, as may be requested by Infinera from time to time. We also take note of the provisions of Para 4.3 of the Pre-Sales and Marketing Agreement. It provides that *'In the event any member of IIPL's staff is required to travel to Infinera's or a customer's work place whether it be to finalise specifications, for training, to hand-over files or otherwise, then in addition to the consideration specified above, Infinera shall be liable to pay IIPL for the following expenses.....'*

(e) In Para 15.2 and 15.3 of their application it is stated by the applicant that the pre-sales marketing agreement is with respect to optical networking equipments. The agreement is, therefore, in relation to supply of goods alone. There are three persons involved in the matter. The first is the supplier based abroad, the second are the customers located in the taxable territory who purchase the goods and the third is the applicant. The scope of work, as narrated in the earlier para, requires that the applicant will engage himself in carrying out promotional activities in the taxable territory. In order to undertake these activities it is necessary for the applicant to first study the market conditions, identify the potential customers, meet them, convey the unique features and characteristics of the products of Infinera highlighting their advantages and usefulness etc. This creates a visibility about Infinera in the market. The prospective customers thereafter contact Infinera and finalise the purchase. The sale is then made directly between Infinera and the customers. However in the entire process the applicant, who identified the prospective customer, convinced them about the products and passed on the information to Infinera. It is an admitted fact that the applicant did not supply the goods to the customers. This was done by Infinera directly. The applicant therefore did not indulge in the main supply of goods. However it is an admitted fact that the applicant acted as the conduit, the bridge, the go-getter who created visibility for Infinera and thus facilitated or enabled the sale of their goods to the customers in the

taxable territory. The actions of the applicant, therefore, squarely fit into the definition of an intermediary.

6.5 The applicant has placed reliance on a decision of AAR, New Delhi, dated 04.03.2016 in the case of Godaddy India Web Services. We have examined the decision. We reproduce the activities carried out by Godaddy India as follows.

a. *Marketing and promotion services* : Applicant proposes to engage in promotion and marketing of GoDaddy US services in India. This would essentially include increasing the awareness of services provided by GoDaddy US and establishment of the brand GoDaddy in India. Towards this, the applicant proposes to provide the following services :

i. *Direct Marketing* : Applicant shall advise GoDaddy US regarding various aspects of the market situation prevailing in India from time to time. Applicant would also advise GoDaddy US regarding upcoming events, festivals, holidays in India and accordingly the suitable timing for rolling out campaigns or advertisements in India (either in various social media or by way of dispatch of personal emails to GoDaddy US existing customers in India). The content of advertisement would be prepared by the marketing team of GoDaddy US itself. Also, such advertisement would be directly placed on social media by GoDaddy US. The necessary advice in this regard and said information would be provided from the applicant to GoDaddy US.

ii. *Branding Activities* : Applicant shall assist GoDaddy US in developing its brand in India by arranging for advertisement activities of GoDaddy US. An independent (third party owned) advertisement agency in India would be appointed by GoDaddy US directly. Such agency would negotiate the price for purchase of time slots or space for display of advertisement in the electronic or print media and coordinate regarding timing for display of the advertisement with Indian advertisement companies. Towards this, the applicant would provide information, advice and support to the marketing team of GoDaddy US regarding various events taking place in India where advertisements can be broadcasted. Also, applicant would suggest to GoDaddy US regarding the locations/geographies in India where banners, billboards could be placed. The advertising agency appointed by GoDaddy US will be solely responsible to arrange required permissions or licenses from any local or State Government authority regarding display of the advertisement at any location or place. The advertisement agencies so employed by GoDaddy US in the entire set of activities aforesaid would be remunerated for all expenses and relevant service charges directly by GoDaddy US and the applicant will have no role to play with regard to appointment of the advertisement agency in India or payment of consideration to the advertisement agency by GoDaddy US.

iii. *Offline Marketing* : Applicant shall undertake marketing and promotional activities in India for GoDaddy US. Towards this, the applicant shall take part in seminars, talk shows or any other events as speakers to spread awareness regarding the GoDaddy brand and services offered by GoDaddy US. Also, the applicant may conduct road shows, take up a stall in a fair or exhibition, hold webcasts for GoDaddy US channel partners or resellers in India to update them on new developments and services provided by GoDaddy US as per the instructions of GoDaddy US. The applicant may also sponsor specific events or social gatherings in India to reach out to the public for creating awareness of GoDaddy US brand. For this purpose, the applicant shall hire an agency in India which will enable the applicant to undertake the said activities. The said agency will take the required permissions or licenses from the local or State Government authorities or any third party event organizers for conduct of such events. The applicant would remunerate such agency directly for the services rendered by the said agency.

(b) *Supervision of quality of third party customer care center services :*

GoDaddy US intends to provide its customers in India a superior experience and quality services. GoDaddy US also intends to provide the customers with an avenue where the customers have round the clock access to technical support and assistance in relation to the services of GoDaddy US. Towards this, GoDaddy US will directly appoint a third party call centre in India to provide such support and assistance to customers in India. Further, to ensure that the call centre provides the best customer support service and that the employees of the call centre understand the relevant technical aspects, GoDaddy US shall require the applicant to provide oversight of the quality of the services of the call centre. Applicant will have no role to play in selection or appointment of the call centre in India by GoDaddy US. Applicant shall provide oversight of the quality of services rendered by the call centre and prepare a report, if desired by GoDaddy US, regarding the nature of complaints received by the call centre from customers in India so that GoDaddy could better appreciate the technical issues and provide long term solutions to customers.

(c) *Payment processing services* : GoDaddy US will provide its services and products to customers in India through its website. To ensure maximum reach to the customer base in India and enable customers to procure the service without any difficulty in making payments, GoDaddy US desires to provide an online payment facility to its customers in India. Customers who possess an international credit card may make payment directly to GoDaddy US in US Dollars. Customers will also be able to obtain the services by using their Indian credit cards or bank payment facilities and make payments in Indian Rupees ('INR'). To enable customers to pay for services in INR, GoDaddy US proposes the applicant to provide payment processing facilities in India, collect money from the customers of GoDaddy US in India and remit the same to GoDaddy US. Applicant shall outsource the payment collection activity to a

third party service provider in India which will provide the necessary payment collection gateway facility to the customers who may wish to effect payments in INR. Applicant proposes to open a separate bank account in India into which the payment collection gateway company will deposit the moneys collected from the customers of GoDaddy US. Further, the applicant may also allow customers to directly deposit money in its bank account using their net banking facility. All such collections from customers (in respect of services provided by GoDaddy US) will be transmitted by the applicant to GoDaddy US on actual basis i.e. without any mark-up.

6.6 We briefly examine as follows the nature of services provided by Godaddy India Web Services to understand the context in which the decision was made and its applicability to the instant case.

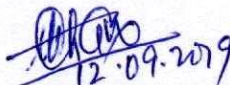
- (a) Marketing and Promotion Services has three components. The first component, Direct Marketing provides that the GoDaddy India's role was restricted to advising GoDaddy US regarding various aspects of the market situation prevailing in India. They would advise the right time to start their advertisement campaign. GoDaddy US would prepare the advertisement material on their own and place the material directly online. Therefore the role of GoDaddy India was purely advisory in nature. Similarly in respect of branding activities GoDaddy US would directly engage a third party advertisement agency. The role of GoDaddy India was restricted to advising the US company about the places where the advertisements should be placed or located. Again the role is purely advisory in nature. In respect of Offline marketing GoDaddy India hired the services of an agency in India and paid them directly. Here GoDaddy US was not involved in any way. Therefore in all these activities the role of GoDaddy was purely advisory and was therefore rightly not considered as an intermediary.
- (b) In case of services related to Supervision of quality of third party customer care center services the call centres were directly appointed by GoDaddy US and the role of GoDaddy India was to carry out inspection to check the quality. GoDaddy India themselves carried out this activity and no third party was involved. Therefore they cannot be considered as an intermediary.
- (c) The payment processing services also clearly bring out that GoDaddy India did not qualify to be an intermediary.

(d) Close examination of the nature of services rendered by GoDaddy India indicates that their role was purely of advisory in nature and the other entities in India were appointed and dealt with directly by GoDaddy US and GoDaddy India had no role in the matter. However the services rendered by the applicant are different in nature as compared to the GoDaddy India case in as much as the applicant acts as a facilitator to the entity located abroad, played the role of an interface between the customers in India and the principals located abroad. In the case of GoDaddy India there was no third person with whom GoDaddy interacted in the taxable territory. In the instant case the applicant has a direct contact with the customers in India forming a triumvirate, an essential feature of an intermediary services. Needless to emphasise that the applicant has himself accepted that they do not carry out the main supply, the supply of goods.

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

RULING

The activities carried out in India by the applicant so far as those activities mentioned in the "Pre-sale and Marketing Services Agreement" would render the applicant to qualify as an "intermediary" as defined under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 and consequently be subject to the levy of GST.


(Harish Dharnia)
Member


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

Place : Bengaluru,

Date : 12-09-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru..

The Asst. Commissioner, LGSTO- 20, Bengaluru.

Office Folder

Infenera

