

**WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)**

BENCH

Mr Sydney D'Silva, Joint Commissioner, CGST & CX (Member)
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST (Member)

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such Appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Udayan Cinema Pvt Ltd
Address	35 G T Road, Sheorahphuly, Hooghly - 712223
GSTIN	19AAACU4138Q1ZR
Case Number	44 of 2018
ARN	AD1911180006556
Date of application	December 26, 2018
Order number and date	45/WBAAR/2018-19 dated 26/02/2019
Applicant's representative heard	Rahul Dhanuka, Advocate

1. Admissibility of the Application

1.1 The Applicant intends to produce a feature film, a portion of which is planned to be shot at locations outside India. For this purpose, he is in the process of appointing CDI Virtual Films Inc. (hereinafter the CDIVF) as a Line Producer in Brazil. He seeks a ruling on whether he is liable to pay IGST on the reverse charge on the payments to be made to CDIVF and, if so, what should be the rate depending upon the classification of the service of a Line Producer. He also wants to know whether the reimbursements made on an actual cost basis will also be subject to IGST.

1.2 The questions raised are admissible for an advance ruling under section 97(2)(a), (b) & (e) of the GST Act, read with section 20(xviii) of the IGST Act, 2017.

1.3 The Applicant declares that the issues raised in the application are not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has raised no objection to the admissibility of the Application.

1.4 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits, along with the Application, a written submission, including a description of the activity of a Line Producer and the proposed draft for the contract with CDIVF (hereinafter the Contract). The Contract is for the 'production services'. According to clause 5 of the Contract, CDIVF will *facilitate* the provisioning of the production services. The Applicant will reimburse CDIVF the cost of procuring these services, based on the bills raised by the service providers, bearing the name of the feature film. CDIVF will hire the local actors in Brazil and will provide insurance coverage for the crew originating and residing in Brazil. This apart, CDIVF will also hold insurance to cover all accidents and injuries during the production of the feature film in Brazil.

2.2 CDIVF will be paid USD 95,000 for his services as outlined above. CDIVF will receive 85% of the above-budgeted amount before the actual shooting begins and the balance amount at least seven days before the shooting ends. Till such final payments, CDIVF may retain as security all production rights and talent buy-outs for such production in Brazil.

2.3 The Applicant argues that CDIVF is supplying intermediary services. He facilitates between the foreign suppliers and the Applicant the supply of goods and services, namely accommodation for the crew, supply of food, props, and ancillary services like renting of shooting locations etc. He cannot alter the nature of the services provided by foreign suppliers. The Applicant knows in advance the amount that the foreign supplier shall charge in as much as the budgeted amount is shared by CDIVF in advance. In case of any deviation from the budgeted amount, CDIVF shall pay the foreign supplier after taking concurrence from the Applicant. Moreover, the invoices raised by the foreign suppliers mention the name of the motion picture.

2.4 Without prejudice to the aforesaid, the Applicant further argues that the service of CDIVF can also be classified as event management service, as described under section 13(5) of the IGST Act, 2017. The shooting of the film in foreign locations, resulting in the emergence of a CD containing the filmed materials, is an 'event' that CDIVF is going to organize and manage.

2.5 At the same time, the Applicant argues that CDIVF will act as pure agent, as defined under rule 33. The Contract specifically provides that the Applicant will reimburse CDIVF at the actual cost of procuring these services, based on the bills the service providers raise in the name of the feature film.

2.6 The Applicant also believes the services provided by the foreign suppliers or CDIVF are classifiable under SAC 999900 as services provided by extraterritorial organizations and bodies.

2.7 The Applicant argues that the service being that of an intermediary or else of an event manager, it fits the description of the services covered under sub-sections (3) to (13) of section 13 of the IGST Act, 2017. The place of supply of the service provisioned from CDIVF is, therefore, the location of the supplier in terms of section 13(2) of the IGST Act, 2017. The location of the supplier being in Brazil, the place of supply is not in India, and the transaction is not 'import' within the meaning of section 2(11) of the IGST Act, 2017. The transaction with CDIVF does not, therefore, constitute an inter-state supply within the meaning of section 7(4) of the IGST Act, 2017. No tax, therefore, is payable under Notification No. 10/2017 – IGST (Rate) dated 28/06/2017.

2.8 Moreover, the Applicant argues that the place of supply being the location of the supplier, the recipient receives the service in Brazil and location of the recipient is, therefore, not within the taxable territory, and no tax is payable on RCM in terms of SI No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017.

3. Submissions of the Revenue

3.1 Concerned officer from the Revenue submits that at the time of signing the Contract the so-called principal suppliers of the services or the services are not clearly identified. The Question of facilitating as an intermediary between the principal suppliers and the recipient, therefore, does not arise. CDIVF is, not, therefore, acting as an intermediary.

4. Observation & Findings of the Authority

4.1. The answer to the question about the liability to pay IGST on the reverse charge on the payments to be made to CDIVF depends upon the location of the recipient of the service. The Applicant, a resident of India, will receive the service in Brazil, where it has no fixed establishments or a specific location at which the service is being supplied. The location of the recipient should, therefore, be the usual place of his residence in terms of section 2(14)(d) of the IGST Act, 2017. The recipient is, therefore located in the taxable territory. Tax is, therefore, payable on RCM in terms of SI No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017, provided the transaction constitutes an inter-State supply within the meaning of section 7(4) of the IGST Act, 2017.

4.2 Since the supplier is located in Brazil and the recipient is located in India, the transaction will be an inter-State one within the meaning of section 7(4) of the IGST Act, 2017 only if the place of supply is the location of the recipient of the service. This condition can be satisfied if the service being supplied is not classifiable as the one specified in sub-sections (3) to (13) of section 13 of the IGST Act, 2017. The question of classification of the Line Producer's service is, therefore, to be answered first before determining whether the Applicant is liable to pay IGST on the payments to be made to CDIVF in terms of SI No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017, provided the transaction constitutes an inter-State supply within the meaning of section 7(4) of the IGST Act, 2017.

4.3 SAC 999900 refers to services provided by embassies and representations from other countries, services provided by international organizations such as the United Nations and its specialized agencies or regional bodies, etc., the Organization of American States, the European Union, the African Union, the League of Arab States, the Organization for Economic Cooperation and Development, the World Customs Organization, the Organization of Petroleum Exporting Countries and other international bodies or extraterritorial units (refer to

Explanatory Notes on Classification of Services; cbic.gov.in). Service of CDIVF does not fit this description, and, therefore, cannot be classified under the above Head.

4.4 It is further argued that CDIVF is acting as a pure agent with respect to the services from the foreign suppliers that the Applicant reimburses on an actual cost basis. According to rule 33(iii), the supplies procured by the pure agent are in addition to the services he supplies on his own account. The Applicant does not specify what services, if any, CDIVF is supplying *in addition to the ones* for which he is 'purportedly' acting as a pure agent. If he was serving only as an intermediary between the Applicant and the actual offshore service providers, the value of his service, being a fee or commission for arranging such offshore services, should be clearly identifiable and could not include the value of the services he had procured on behalf of the Applicant, and he could not be eligible for deduction under rule 33.

4.5 The Applicant's alternative description of CDIVF as an event manager needs to be discussed in this context. Event management services (SAC 998596), as described in section 13(5) of the IGST Act, refers to "admission to, or organization of a cultural, artistic, sporting, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and services ancillary to such admission or organization". Clearly, any event whatsoever does not fit the bill. It has to be an event of a nature specified above. The emergence of a CD containing footage for a motion picture is not a cultural, artistic, or entertainment or a similar event. It is merely a stage in the process of producing the feature film. Screening of the completed motion picture or, for that matter, of the footage contained in the CD, however, can fit the description of events included in section 13(5) of the IGST Act. CDIVF is not being contracted for organizing such a screening event for the Applicant. CDIVF is not, therefore, supplying services for organizing events included in section 13(5) of the IGST Act or the events described under SAC 998596.

4.6 In his written submission the Applicant describes CDIVF as the Line Producer. He refers to the judgment in the case of Yash Raj Film (P) Ltd [(2013) 23 ITR 125], where the responding company is engaged in the production of motion pictures. It has employed a few overseas service providers for arranging the logistics to facilitate the shooting of the film in a foreign location. The question before the Tribunal was whether the payments made for procuring these services could be treated as 'fees for technical services' within the meaning of Explanation 2 to section 9(1)(vii) of the Income Tax Act, 1962. The Tribunal held that these were commercial services that were not to be treated as technical, managerial or consultancy services within the meaning of the above Explanation. The Tribunal has not explored whether the said services define the entire ambit of a Line Producer's activity or whether the service providers mentioned in the petition are Line Producers. Neither has the Tribunal examined whether these commercial services are intermediary in nature. This judgment does not, therefore, throw much light on the question of classifying the service of a Line Producer and, therefore, not applicable in the present case.

4.7 It is evident from the above discussion that the Contract, the Applicant's argument based on the Contract, or the judgment in the case of Yash Raj Film (supra) does not throw sufficient light on the role CDIVF plays as a Line Producer in the production of the film in offshore locations. He is alternately described as an intermediary service provider or an event manager.

It is, therefore, pertinent to examine the role of the Line Producer, as understood in common parlance in the film industry.

4.8 A Line Producer is a key member of the production team for a motion picture. Typically, a Line Producer manages the budget of a motion picture. Alternatively, or in addition, they may manage the day to day physical aspects of the film production, serving a role similar to the 'unit production manager'. A Line Producer may also hire key members of the crew, negotiate deals with vendors, and is considered the head of the production. The Line Producer supervises the preparation of the film's budget and is in charge of all the business aspects of the physical production of the film. They are called Line Producers because they cannot start work until they know what the 'line' is between the 'above-the-line' costs, which relate to writers, producers, directors and cast, and the 'below-the-line' costs which include everything else, e.g., crew salaries, equipment rentals, development costs, locations, set design and construction, insurance, etc. They are given the script and asked to assess the likely 'below the line' cost of the production which involves breaking down the screenplay into a schedule - a timetable for the film shoot that shows how long it will take to shoot each scene. From this schedule, the Line Producer can accurately estimate the cost of each day's shooting and produce a provisional budget estimating the total amount of funding required.

4.9 During pre-production, Line Producers, working closely with the director, production manager, first assistant director, art director and other heads of department, prepare the production schedule and budget and set the shoot date. Line Producers oversee all other pre-production activities, including hiring the production team, setting up the production office, location scouting, ensuring compliance with regulations and codes of practice, sourcing equipment and suppliers, selecting the crew, engaging supporting artists and contributors, and monitoring the progress of the art department and other production departments. Line Producers are ultimately responsible for overseeing all activities, and for ensuring that the production is completed on time and within budget. [Source: Media match - USA Media Industry magazine: Media-Match.com]

4.10 It is evident from the above discussion that a Line Producer's job is not limited to arranging hotel accommodation, catering for the filming crew, local transportation and procuring location permits on behalf of the principal. Although he may facilitate the provisioning of a few services where the Applicant reimburses him on an actual cost basis, the Line Producer, being a key member of the production team, supplies the main service on his own account. It involves arranging all logistics for actual shooting, estimating and budgeting the cost of shooting and other residual activities relating to shooting on location. He assists and collaborates with the filming crew of the Applicant in deciding on various issues relating to the physical production of the motion picture in the offshore locations, including insurance coverage of the local actors and crew. He also takes the risk of an accident occurring during the shooting. His service is, therefore, an integral part of the activity for the production of the feature film.

4.11 The Applicant himself submits that CDIVF is going to organize and manage the shooting in Brazil that will result in the emergence of a CD containing the audio-visual content, and retains as security all production rights and talent buy-outs for such production in Brazil till receiving the final payment from the recipient. Clearly, CDVIF cannot retain *production rights*

and talent buy-outs, even as security, unless it is engaged in the production and realization of a motion picture, explicitly or implicitly protected by copyright, without a contract for outright sale. It is, therefore, provisioning motion picture production service classifiable under SAC 999612. It is, therefore, not an intermediary service.

4.12 The service being supplied is not, therefore, classifiable as the one specified in sub-sections (3) to (13) of section 13 of the IGST Act, 2017. The transaction between CDIVF and the Applicant is, therefore, import of service and constitutes an inter-State supply within the meaning of section 7(4) of the IGST Act, 2017, and the Applicant is liable to pay IGST on the payments to be made to CDIVF in terms of SI No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017 at 18% rate specified under SI No. 34(vi) of Notification No. 08/2017 – IT(Rate) dated 28/06/2017, as amended from time to time.

4.13 Finally, the Applicant's question about the applicability of IGST on the reimbursements made on the actual cost basis needs to be answered. Such costs, if any, may be eligible for deduction under rule 33(iii) of CGST Rules, 2017 from the value of supply of motion picture production service, provided CDIVF is acting as a pure agent of the Applicant. Pure agent means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as a pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The Contract does not specify CDIVF as the Applicant's pure agent. It merely refers to bills for some of the services procured will bear the name of the feature film and will be paid on an actual cost basis. The crucial test is whether these services are a charge on the Applicant or CDIVF. If CDIVF is liable to pay the suppliers of these services no matter what the Applicant does, it will be treated as a charge on CDIVF. As CDIVF holds the production rights, even though as security, all procurements of goods and services will be a charge on him unless specifically excluded. That the bills for such services bears the name of the feature film and not raised on the Applicant corroborates to the above conclusion. No deduction is, therefore, available in terms of the contract with CDIVF from the value of the supply of motion picture production service even if payment is made on an actual cost basis.

4.14 If the Applicant modifies the contract so that CDIVF acts as pure agent for certain services in addition to the main supply of motion picture production service, the related transactions will be import of services from the actual suppliers, and the amount paid on actual cost basis for procuring those services will be subjected to IGST at the applicable IGST rate on such services.

4.15 In view of the foregoing, we rule as under

RULING

The Line Producer to be engaged for the shooting of a feature film in Brazil is supplying motion picture production service, classifiable under SAC 999612.

The Applicant is liable to pay IGST on the payments made to the above Line Producer in terms of SI No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017 at 18% rate specified under SI No. 34(vi) of Notification No. 08/2017 – IT (Rate) dated 28/06/2017, as amended from time to time.

No deduction is available in terms of the contract with the Line Producer appended to the Application from the value of the supply of motion picture production service even if payment is made on an actual cost basis. However, if the Applicant modifies the contract so that the Line Producer acts as pure agent for certain services in addition to the main supply of motion picture production service, the related transactions will be import of services from the actual suppliers, and the amount paid on actual cost basis for procuring those services will be subjected to IGST at the applicable IGST rate on such services.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SYDNEY D'SILVA)
Member

(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling

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