

Marketing services to overseas client held as 'intermediary services' liable to IGST: AP AAR

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Summary

The Andhra Pradesh Authority for Advance Ruling (AAR), in a recent case, has held that marketing consultancy services provided by the applicant to overseas client constitutes 'intermediary services'. Further, the AAR has stated that merely because consideration is received in convertible foreign exchange would not make the transaction as 'export of service'.

Facts of the case

- The applicant¹ is an authorised non-exclusive consultant for a foreign company².
- The applicant will provide marketing and promotion services to the foreign company. It will receive a fixed percentage of commission basis net sales on orders solicited by it and accepted by the foreign company. The said commission shall be billed in foreign currency by the applicant.
- The applicant sought an advance ruling to determine the taxability of the marketing consultancy services provided to the foreign company.

Andhra Pradesh AAR's observations and ruling³

- **Facilitate supply of goods:** The AAR observed that the applicant will facilitate supply of goods between the foreign company and its customers in India. Therefore, the services provided by the applicant shall be considered as intermediary services⁴. The place of supply shall be the location of the supplier i.e., location of the applicant which is in India⁵.
- **Services does not qualify as 'export of service':** As the transaction fails to satisfy the prescribed conditions, it does not qualify as export⁶. The AAR further clarified that merely because

¹ M/s DKV Enterprises Private Limited

² Grace Products (Singapore) Pte. Limited

³ AAR no. 04/AP/GST/2020 dated 24.02.2020

⁴ Section 2(13) of the IGST Act, 2017

⁵ Section 13(8) of the IGST Act, 2017

⁶ Section 2(6) of the IGST Act, 2017

- the consideration will be received in convertible foreign exchange, it would not qualify as export. covered under ‘intermediary service’ and shall be treated as an inter-state supply⁷ liable to IGST.
- **Inter-state supply:** The AAR held that marketing consultancy services provided by the applicant shall be

Our comments

The taxability of ‘intermediary services’ has been a matter of extensive litigation under GST regime. A similar ruling was also given by the West Bengal AAR in case of Global Reach Education Services Pvt. Ltd., which was further upheld by Appellate Authority for Advance Ruling as well. It held that the marketing and promotion of foreign university’s courses and assistance in enrolment/recruitment of students in India shall be treated as ‘intermediary service’ as the consideration was based on the number of students enrolled.

Contrary to this, under the service tax regime, in case of GoDaddy India Web Services Private Limited, it held that the services of marketing and branding provided by India entity to its parent company in USA shall be regarded as ‘export’ as provision of services was on a principal-to-principal basis. Even though advance ruling is applicable only to the applicant, such rulings under GST regime may prompt companies undertaking marketing/promotion activities for overseas entities to evaluate their service contracts and revisit their tax positions. It is pertinent to note that to address the ambiguity in this regard, the Central Board of Indirect Taxes and Customs (CBIC) had issued a clarification that was subsequently withdrawn. A revised clarification is still awaited.

At this juncture, due clarification from government will be a welcome move as levying GST on such services will affect the competitiveness of the Indian exporters undertaking marketing and promotion activities for overseas clients.

⁷ Section 7(5)(c) of the IGST Act, 2017

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