

Supply of back office support services to overseas client regarded as ‘intermediary services’

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Summary

The Maharashtra Appellate Authority for Advance Ruling (AAAR) in a recent decision¹ has concurred with the Maharashtra Authority for Advance Ruling (AAR) and held that the supply of back office administrative and support services like generation of purchase orders, pre-shipment inspection, transportation arrangement, managing payment requests, payroll processing, trouble shooting, etc. undertaken by an Indian entity for its overseas clients is classifiable as an ‘intermediary services’. Accordingly, it held that the place of supply shall be the location of the service provider. The AAAR further held that supply of such bundled services shall be treated as a composite supply treating ‘intermediary services’ as the principal service.

Facts of the case

- The Applicant² had entered into a ‘service agreement’ with its overseas client wherein the Applicant provided backoffice administrative and support services, inter alia including the following services:
 - Managing/creating documents such as purchase orders, sales contracts, pro forma invoices, etc.

¹ Maharashtra AAAR No. MAH/AAAR/SS-RJ/22/2018-19 dated 26 February 2019

² Vservglobal Private Limited

- Co-ordination with suppliers/customers for execution of purchase and sales contracts
- Liaise with suppliers for cargo readiness, liaise with inspection authorities
- Payment processing and accounting
- Seeking carrier booking details and sharing the same with the suppliers and customers
- Other troubleshooting services, etc.
- The overseas clients are engaged in international trading of chemicals and other products. The Applicant's services commence after finalisation of the purchase/sale order by the clients.
- The Applicant received consideration in convertible foreign exchange per purchase / sale transaction handled, subject to minimum of \$10,000 per month.
- The Applicant had sought a ruling on whether the above services qualify as 'zero rated supply'³. The Maharashtra AAR⁴ had held that the activities undertaken indicate that the Applicant is a person who arranges or facilitates supply of goods or services or both between the overseas client and customers of the overseas client. Therefore, the Applicant is covered under the definition of 'intermediary'⁵ and the services being provided by the Applicant would not qualify as a 'zero rated supply'.
- Aggrieved by the Maharashtra AAR's order, the Applicant filed the present appeal before the Maharashtra AAAR.

Issues before Maharashtra AAAR

- **Issue 1:** Whether the backoffice support, administrative and accounting services along with the services such as liaison with buyers and sellers of the client with respect to delivery, transportation of goods and settlement of payment, etc. provided in the form of one package qualify as 'intermediary services'
- **Issue 2:** Whether the supply of the above services in a package as being claimed by the Applicant would be construed as 'composite supply'

³ Section 16 of the Integrated Goods and Services Act, 2017 (IGST Act)

⁴ Maharashtra AAR No. GST-ARA-03/2017-18/B-59 dated 7 July 2018

⁵ Section 2(13) of the IGST Act

Arguments by the Applicant

- An 'intermediary' is a person who arranges or facilitates the supply of goods or services or both but excludes a person who provides goods or services on his/her own account.
- Facilitating supply of goods or services is a wide term and entire trade, commerce and industry could be treated as being engaged in the supply of goods or services in one way or the other. Thus, giving such a meaning to the term would render other provisions of the law, relating to determination of place of supply, redundant.
- The Applicant was engaged by its clients for providing services on a principal to principal basis. The Applicant placed reliance on a ruling of the AAR (rendered in the context of the erstwhile Service Tax regime) in the case of Godaddy India Web Service Private Limited⁶ where it was held that supply of services of marketing, branding, payment processing, etc. on a principal to principal basis was a case of provision of support services.
- As regards arguments for treating such services as composite supply, the Applicant argued that 'back office support' and 'accounting' services are its principal supply.

Maharashtra AAR's observations and ruling

- As per the agreement between the Applicant and its clients, the AAAR observed that in addition to providing back office administration and accounting services, the Applicant also provided several other significant services which facilitate the supply of goods between its overseas clients and the customers of the clients.
- Services such as sending sales contract, pro forma invoice to customers and receiving shipping instructions, sending purchase order to suppliers, liaising with supplier, inspection authorities, etc. are beyond the scope of back office work. These services are in the nature of facilitation of the supply of goods between the

⁶ Reported as 2016 (46) S.T.R. 806 (A.A.R.)

overseas client and its customers as all these services are essential for the smooth supply of goods between the aforesaid two parties.

- Other services provided by the Applicant could be construed as 'ancillary service' to the intermediary services being provided as these activities are in relation to the supply of goods between the two persons.
- As regards arguments of the applicant regarding principal to principal supply, the AAR observed that the goods which were being supplied between the overseas client and its customers do not belong to the Applicant. This confirms the fact that the Applicant is not providing the supply of goods on its own account.
- The AAAR held that the predominant component of the services being rendered by the Applicant to its client is in the nature of intermediary.
- The AAAR further observed that the above fact is also substantiated by the consideration receivable by the Applicant which is solely based on the number purchase/sale transactions handled by the Applicant.
- Thus, the AAAR held that all the criteria applicable are satisfied and the Applicant is clearly acting as an intermediary while performing these activities.
- The AAAR distinguished the decision in case of Godaddy by observing that in the case of GoDaddy, the provision of service was on a principal to principal basis and was provided with the sole intention of promoting the GoDaddy US brand in India whereas in the present case, the Applicant is undertaking the activities for and on behalf of its overseas client.
- As regards the Applicant's argument that entire trade, industry and commerce is engaged in facilitating supply of goods or services, the AAAR observed that the decision is Applicant-specific, based on the agreement before it, and cannot be generalised for the industry as a whole.
- With respect to treating the services as a case of composite supply, the AAAR held that the services offered by the Applicant in one package are nothing but 'composite supply' of which the 'intermediary services' are to be treated as a 'principal supply'. Accordingly, other services like back office administrative services and accounting services are ancillary in nature whereas the services of payment settlement are incidental in nature.

Our comments

Considering the various divergent rulings on the subject, it may be important for the exporters to re-evaluate/analyse the terms of their service contracts with overseas entities to determine whether the supply of services qualifies as supply on a principal to principal basis or as supply of services between the principal and the agent. An important aspect which has emerged from recent rulings on similar issues is that the manner in which the consideration is charged from the overseas entity plays an important role in determining the taxability. In the case of Global Reach Education, the consideration was linked to the number of students enrolled for the course and in the present case it has been linked to sale or purchase transactions, which established the principal-agent relationship.

Though the advance rulings are applicable only to the Applicant, it may have an impact for other businesses engaged in providing similar services. Due clarification from the government on the subject matter will help mitigate future litigation.

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