

Supplier of management services to overseas entity not covered under the term ‘intermediary’ – Kerala AAR

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Summary

The Kerala Authority for Advance Ruling (AAR) has in a recent decision¹ held that the Indian resident individual engaged in providing management consultancy services to its overseas client shall not fall under the definition of the term ‘intermediary’ under² the IGST Act, 2017. However, the AAR refrained from expressing an opinion upon whether such services fall within the scope of ‘intermediary services’ as the same involved determination of ‘place of supply,’ which is beyond the AAR’s jurisdiction.

Facts of the case

- The Applicant³ is a resident of India and is engaged in the supply of management consultancy services to his clients located outside India.
- The management consultancy services relate to the Applicant’s expertise in various divisions of the client such as electronics, FMCG, trading, automotive and other businesses across the group and other newly-added verticals. The services include advising on techniques for sales growth, improvement in margins, controlling expenses, reduction in stock ageing, training and monitoring teams, etc.
- The Applicant analyses the data provided by the client, renders his advice over telephone and email, and receives the consideration for such services as fixed monthly consultancy fees in convertible foreign exchange.

¹ Kerala AAR No. KER/37/2019 dated 02 March 2019

² Under section 2(13) of the Integrated Goods and Services Act, 2017 (IGST Act)

³ Shri. Thomas Joseph Nellissery

- The Applicant sought a ruling on whether he will be covered under the definition of ‘intermediary’⁴ and whether the above services supplied to the client constitute ‘intermediary services’⁵ under the GST law.

Kerala AAR’s observations and ruling

- The services being supplied by the Applicant are covered under the category⁶ of ‘management consulting and management services, including financial, strategic, human resources, marketing, and operational supply chain management’.
- Providing advice, guidance and operational assistance concerning the marketing strategy and operation of an organization also fall under this category.
- Perusing the consultancy agreement between the Applicant and his clients, the AAR held that the services provided by the Applicant to his clients does not in any way facilitate or arrange the supply of goods or services or both between two or more persons. Therefore, the Applicant will not fall within the definition of the term ‘intermediary’.
- With regard to whether such services fall within the scope of ‘intermediary services’, the AAR observed that the same involved determination of ‘place of supply’ of services provided by the Applicant which is beyond the AAR’s jurisdiction.

Our comments

An intermediary is a person who arranges or facilitates supply of goods and/or services between two or more persons, but does not supply on his own account. In the present case, the Kerala AAR has held that the Applicant is directly providing the services to its overseas clients and is not facilitating or arranging the supply between two or more persons. Prima-facie, the nature of services being provided and the terms of the service agreement are key to determining whether the same are being provided in the nature of an intermediary or are on a principal-to-principal basis.

The Kerala AAR’s observation that determination of ‘place of supply’ is outside its jurisdiction is along the same lines as the Haryana Appellate AAR’s ruling in case of

⁴ Section 2(13) of the IGST Act

⁵ Section 13(8)(b) of the IGST Act

⁶ Included under the heading 998311 of the Scheme of Classification of Services

M/s Esprit India Private Limited, wherein it was held that determination as to whether services qualify as 'export of service' are outside the AAR's jurisdiction.

Determination of place of supply is an important aspect to evaluate the tax treatment in case of supply of services to an overseas entity. It is imperative that the government comes out with an alternate remedy for taxpayers to pre-determine the tax impact in cases involving supply of services to overseas entities, so that litigation on similar issues can be minimised.

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