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Body

AUTHORITY FOR ADVANCE RULING No. GST-ARA-101/2019-20/B-53, Dated 27th April, 2022
MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010,
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF
(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)
(2) Shri. T. R. Ramnani. Joint Commissioner of State Tax. (Member)

ARN No.		AD270120009274O
GSTIN Number, if any/ User-id		27AASFG9447K1ZI
Legal Name of Applicant		M/s. GULF TURBO SOLUTIONS LLP
Registered Address/Address provided while obtaining user id		Plot No. W-327, TTC Industrial Area, MIDC Rabale, Navi Mumbai-400701
Details of application		GST-ARA, Application No. 101 Dated 03.02.2020
Concerned officer		RAI-VAT-C-028, Raigad Division
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)(As per applicant)	Gulf Turbo Solutions LLP (the applicant), a LLP firm, situated at Navi Mumbai is in the business of service and repairs of various types of Turbochargers and supplying spare parts required for Turbochargers & ship spares and started its operations in 2018 in India. Gulf Turbo Repairs & Services (GTRS) has its registered office at A-4/Saif Zone, PO Box-9148, SHARJAH, UAE. Special relationship exists between applicant & GTRS whereby majority of the shareholding in both the companies is owned by Mr. Rehan Marzban Karanjia. Applicant & GTRS have agreed to enter in to Marketing Services Agreement once advance ruling is received on certain issues.
issue/s on which advance ruling required		> Classification of any goods or services or both >Determination of the liability to pay tax on any goods or services or both
Question on which advance ruling required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and

Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. GULF TURBO SOLUTIONS LLP, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether Marketing Services agreed to be provided by the Applicant under Marketing Services Agreement agreed to enter into will constitute supply of ' Support Services' falling under HSN Code 9985 or as 'Intermediary Services' classifiable under HSN Code 9961/9962?
2. Whether Marketing Services provided by the applicant is an export of services as defined under Section 2(6) of the Integrated Goods and Services Tax Act 2017?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION - AS PER THE APPLICANT

- 2.1 Gulf Turbo Solutions LLP (hereinafter referred as GTSLLP), the applicant, a LLP incorporated in India, is in the business of service and repairs of various types of Turbochargers and supplying spare parts required for Turbochargers and ship spares.
- 2.2 Gulf Turbo Repairs and Services FZC (hereinafter referred as GTRS) is the company incorporated/registered in Sharjah, UAE & is also in the business of service & repairs of various type of Turbochargers.
- 2.3 Special relationship exists between both the companies whereby majority of shares in both the companies are owned by Mr. Rehan Marzban Karanjia
- 2.4 Applicant is agreeing to provide Marketing Services to GTRS FZC as per the Marketing Services Agreement to be entered into between both the parties. Scope of the services under the agreement include: conducting market surveys & providing GTRS FZC with information on Indian & International market trends & features so to assist in determining the nature and scope of Indian & International Market potential; Assisting GTRS in conducting sales prospection through participation in industry events such as exhibitions, etc. ; Assisting GTRS in adaptation and implementation of its advertising policy; Liaising with Customers & to collect their Turbocharger & Engine Room Machinery Service & Spare parts specifications & requirements, strategy, & reporting the information obtained through such customer interactions to GTRS; Facilitating GTRS in arrangement of discussions & provision of interpretation services & cross culture advise; Connecting prospective customers with representatives of GTRS for the purpose of obtaining orders and establishing/maintaining close commercial relation between GTRS and Customers ; Providing information on products & its functioning, etc., to GTRS's Customers and notifying GTRS of any consumer complaints; Monitoring regulatory developments (including establishing and maintaining contact with regulatory agencies.); Any other assistance, regarding GTRS's marketing activities that may be reasonably requested by GTRS after the effective date in writing to GTSLLP.
- 2.5 Appointment of Applicant for Marketing Support services will be on P2P basis. Relationship between the parties will be that of independent contractors which do not intend to create relationship of Principal and Agent between both the parties.
- 2.6 Applicant will provide services to GTRS on its own account, will bear all its expenses connected with the performance of the services under the agreement. Applicant will not have authority to commit to any prospective customer either in terms of price, time, specifications or any other terms of contract. Acceptance of business & Terms & Conditions will be at the sole discretion of GTRS FZC.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

statement containing Applicant's interpretation of the law with respect to Question 1

There are two possible classifications for the marketing services supplied by Applicant.

The relevant HSN codes are as under:

HSN Code 9961/9962 - Intermediary Service-Services in wholesale trade and Services in retail trade.

HSN Code 9985 - Support Service

2.8 The impugned Marketing Service Agreement clearly defines the relationship between the parties is that of independent contractors meaning thereby that agreement does not intend to create relationship of principal and agent. Applicant is not authorized and in no way carries out activities such as negotiation, conclusion of contracts, acceptance of orders, determination of pricing, invoicing, rebate/discounts, resolution of customer complaints or settlement of disputes with customers. On the contrary it is clearly mentioned in the agreement that applicant will provide services on his own account. All the costs and expenses incurred for giving these services will be borne by the Applicant. Hence, the proposed marketing services as per agreement will not fall under 'Intermediary Services' as envisaged under Section 2(13) of IGST Act, 2017.

2.9 Applicant submits that supply of services as per marketing service agreement will constitute composite supply with marketing services as principal supply since Applicant will be providing two or more taxable services which is naturally bundled in the ordinary course of business.

Bouquet of services proposed to be provided would constitute as a package for single consideration.

Statement containing Applicant's interpretation of the law with respect to Question-2

2.10 Applicant fulfills all the conditions for treating the supply of marketing services as export of services in terms of section 2(6) of the IGST Act.

2.11 Applicant vide submissions dated 13.12.2021 has reiterated their earlier submissions and further submitted:

CLASSIFICATION OF THE SERVICES -

2.12 As per applicant's interpretation all the Marketing Services listed in the agreement will be individually classified as below

a. GTSLLP will make market surveys of the Turbochargers and other ship spares related services in particular territory & report results thereof to

- GTRS. GTSLLP agrees to conduct, research on matters related to nature & scope of overall market potential in India and international market, demand and supply of these products and services, major customers and major suppliers of similar services, quality and quantity requirements of the market and submit report on the research done. These services will be classified under SAC Code 998371- Market Research services.
- b. Assisting GTRS in conducting sales prospection through participation in industry events such as exhibitions, scientific gatherings, trade shows etc. These services will be classified under SAC Code 998596- Events, exhibitions and trade shows
- c. Assisting GTRS in adaptation and implementation of its advertising policy. These service will be classified under SAC Code 998361- Advertising Services
- d. Liaising with customers to understand their plans, strategy & technical specifications requirements and reporting them to GTRS. These services will be classified under 99859 -Liaising and co-ordination activities
- e. Providing feedback on the service requirements obtained during market survey to GTRS to improve its marketing. These services will be classified under SAC Code 98399- Other professional, technical and business services not elsewhere classified.
- f. Providing information obtained during market survey and research on GTRS Turbo charger services, its functioning and feedback as to complaints if any. These services will be classified under SAC Code 998399- Other professional, technical and business services not elsewhere classified.
- g. Connecting customers with representatives of GTRS for the purpose of business and other commercial discussions between Customer and GTRS. These services will be classified under SAC Code 99859 -Business support services
- h. GTSLLP agrees to provide from time to time as and when requested by GTRS with economic, industrial and technical information on the Turbochargers and other ship spares and related services, markets, trends and outlook together with similar information concerning such other industries in India and world globally. These services will be classified under SAC Code 998394-Original compilation of facts or information or may be classified under SAC Code 9985 -Business support services
- i. Monitoring regulatory developments- These services will be classified under SAC ode 998216-Other legal service not elsewhere classified.
- 2.13 Applicant's role in respect of adoption and implementation of GTRS's advertising policy, sales promotion through exhibition/trade shows, liaising with customers etc. is in the nature of assistance in conducting the said activities and not actual provision of services on its own account
- Conducting the Market Survey and information on Market trends are the main activities that determine the nature and scope of Indian and International market potential for GTRS.

WHETHER PROVISION OF THESE SERVICES CONSTITUTE INTERMEDIARY AS DEFINED UNDER SECTION 2(13) OF THE IGST ACT..

In order to determine whether a person is an intermediary or not, following factors need to be considered-

Nature and Value- An intermediary cannot alter the nature and value of the service the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the Principal must know the exact value at which the service is supplied (or obtained) on his behalf and discounts that intermediary obtains must be passed back to the Principal.

Separation of Value- The value of intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of sale or purchase price. Generally, an amount charged by the agent from his principal is referred to as 'Commission'

Identity and Title- Service provided by intermediary on behalf of the principal is clearly identifiable.

2.15 Normally it is expected that intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of Main Service. It is clear from the Service Agreement that the relationship between the parties is that of independent contractors and it is further clear that agreement do not intend to create relationship of Principal and Agent.

GTSLLP will not represent itself to be agent of GTRS and vice versa.

2.16 Further as the agreement applicant has no authority to conclude or negotiate any contract or secure any orders on behalf of GTRS. On the contrary applicant would provide service on his own account to GTRS to further augment its business of Turbo Charger repairing services and supply of ship spare parts in India and globally. All the costs and expenses to provide these services to GTRS will be incurred and borne by GTSLLP.

2.17 Consideration for all these services is worked out on cost plus margin basis without any correlation to the sale of service or business transactions. Bouquet of services proposed to be provided will constitute as a package for single consideration. Thus, the proposed service under marketing Services Agreement cannot be classified as 'Intermediary Service'

WHETHER SERVICES SUPPLIED BY APPLICANT CONSTITUTE COMPOSITE SUPPLY AND CATEGORIES AS 'SUPPORT SERVICES'

2.18 supply of services as evidenced by Marketing Services Agreement constitute as composite supply with Marketing Services as a principal supply. In the Marketing Services Agreement, applicant is proposing more than two taxable supplies to the Recipient GTRS. In respect of supplies of two or more taxable supplies and to fall within the ambit of composite supply, it will be necessary to determine whether particular supply is naturally bundled in the ordinary course of business and what constitutes Principal Supply. Further, Applicant's role in respect of adoption and implementation of GTRS's advertising policy, sales promotion, liaising with customers etc. is in the nature of assistance in conducting the said activities and not actual provision of services on its own account. Conducting the Market Survey and information on Market trends are the main activities that determine the nature and scope of Indian and International market potential for GTRS.

2.19 As per applicant's interpretation the services proposed to be provided under Marketing Services Agreement would fall under Group 99837 as

Market Research Services and the services proposed to be provided by applicant is an export of services as defined under section 2(6) of IGST Act 2017

03. CONTENTION - AS PER THE CONCERNED OFFICER:

Officer submission on 08.12.2020:-

3.1 It is apparent from the record the M/s Gulf Turbo Repair and Services FZC (GTRS) is registered in Sharjah whereas the applicant is registered in Mumbai; that both are distinct persons and there is no apparent subsidiary holding relationship which is evident from the contract. Also, the place of supply of services as per agreement is outside India i.e. Sharjah. The provisions of technical services as well as ship spares and turbo charges are outside India. Also, the receipt is outside the India and service provider is in India. The nature of business proves that both are not mere establishment of each other. Hence it is apparent from the agreement that the nature of transaction can qualify as exports of services as per the section 2(6) of IGST Act 2017. Thus, the nature of transaction does not seem to be of support or intermediary services as per the documents available on record.

3.2 However the scope of sub clause b,d,e and g of clause (5) as per the agreement seem to be ambiguous. From the description of services mentioned in sub clause (b), (d), (e) and (g) of Clause 5, it is evident that applicant indulges in provision of services which could be treated as intermediary services. Hence this office is of the opinion that though all other criterion of export of services is fulfilled, the nature of services of M/s GST LLP is of intermediary nature.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 10.12.2020. Authorized representative of the applicant, Shri. Rajendra Jahagirdar, C.S. was present. Jurisdictional Officer Shri.Mukund Mohod, STO, RAI-VAT-C-028, Raigad Division was also present. The authorized representative made oral and written submission with respect to admission of the application. Jurisdictional officer also made submission.

4.2 The Application was admitted and Final e-hearing was held on 14.12.2021. The Authorized representative of the applicant, Shri. Rajendra Jahagirdar, CS was present. The Jurisdictional officer was absent. Case was heard.

05. OBSERVATIONS AND FINDINGS:

5.1 We have perused the documents on record and submissions made by both, the applicant as well as the jurisdictional officer in the said matter.

5.2 The Applicant, M/s Gulf Turbo Solutions LLP has submitted that they are agreeing to provide Marketing Services to M/s Gulf Turbo Repairs and Services FZC (GTRS) as per the Marketing Services Agreement agreed to be entered into between both the parties once advance ruling is received from the Advance Ruling Authority. Thus, it is clear that presently there is no agreement between the applicant and GTRS.

5.3 The applicant has listed the supply of services to be rendered by them to GTRS and the services include as under:-

- (a) Liaising with Customers and potential Customers and to collect their Turbocharger & Engine Room Machinery Service & Spare parts specifications & requirements, strategy, and reporting the information obtained through such customer interactions to GTRS
- (b) Connecting prospective customers with representatives of GTRS for the purpose of obtaining orders and establishing and maintaining close commercial relationships between GTRS and Customers.
- (c) providing information on products and its functioning or similar such services to GTRS's Customers and notifying GTRS of any consumer complaints.
- (d) Monitoring regulatory developments (including where possible establishing and maintaining contact with regulatory agencies.) and reporting the same to GTRS.
- (e) Providing any feedback to GTRS that would help to improve the GTRS marketing. Facilitating GTRS in arrangement of discussions and provision of interpretation services and cross culture advise.

5.4 The applicant has submitted that, there are two possible classifications for the marketing services supplied by them namely, Intermediary Services or Support Services. The applicant has further submitted that, as per the agreement they will provide services on its own account and on a P2P basis with GTRS and therefore the impugned services cannot be covered under Intermediary Services. The applicant has also submitted that, the services supplied by them constitutes supply of 'Support Services' involving a composite supply with marketing services as principal supply and Bouquet of services proposed to be so provided would constitute as a package for single consideration.

5.4.1 Certain services mentioned in the applicant's submissions and reproduced in para 5.3 above does not support the applicant's contention that they will provide services on its own account and on a P2P basis with GTRS for example 'Liaising with Customers and potential Customers and to collect their Turbocharger & Engine Room Machinery Service & Spare parts specifications & requirements, strategy, and reporting the information obtained through such customer interactions to GTRS' means that the applicant is interacting with customers on behalf of GTRS since information obtained from such customers is submitted to GTRS and therefore the applicant is definitely not acting on a P2P basis with GTRS. There is presence of two more persons other than the applicant in the case of such interaction.

5.4.2 Further, the applicant will be 'connecting prospective customers with representatives of GTRS for the purpose of obtaining orders and establishing and maintaining close commercial relationships between GTRS and Customers'. Thus, the applicant appears to be acting as a conduit between GTRS and the customers and such action as a conduit can also be seen from the fact that, the applicant will be providing any feedback to GTRS that would help to improve the GTRS marketing. Why would the applicant require improving GTRS marketing if they are having a P2P business, this fact has not been explained by the applicant. Further the fact that the applicant will be facilitating GTRS in arrangement of

discussions and provision of interpretation services and cross culture advise also shows that the activity of the applicant is to promote, assist, facilitate, the business of GTRS.

5.4.3 From the draft agreement submitted by the applicant, we find that there is a clause that there is a separate Transfer Pricing Agreement between the applicant and GTRS for supply of services as well as supply of goods. In general practice, Transfer Pricing is an accounting practice that represents the price that one division in a company charges another division for goods and services provided and further, Transfer pricing allows for the establishment of prices for the goods and services exchanged between subsidiaries, affiliates, or commonly controlled companies that are part of the same larger enterprise. The applicant has submitted that they are dealing with GTRS on a P2P basis and it is also seen that there is a Transfer Pricing agreement between the applicant and GTRS which implies that they are not dealing on a P2P basis being related parties.

5.4.4 The Draft Agreement submitted by the applicant also reveals that under the "Liability" clause, the applicant will not be responsible for the product liability or warranty claims on any product or services supplied by GTRS to any customer or business as a result of marketing services under this agreement. Even this part of the agreement along with the discussions made above, establishes that the applicant is acting as a conduit between GTRS and its customers in India.

5.5.1 Since the applicant acts as a conduit between GTRS and customers in India, it therefore appears that the applicant is acting as an intermediary in the subject case. We will therefore, discuss the definition of an Intermediary as per GST Laws and see whether the applicant fits into the definition of an Intermediary.

5.5.2 It is necessary first, to understand the definition of 'intermediary' as defined in the CGST Act under Section 2(13) of the IGST Act which is reproduced as under:-

"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"

5.5.3 As per the definition, an intermediary:

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

5.5.4 We find that an intermediary can be called "by whatever name". So, in the subject case condition number (i) is satisfied.

5.5.5 The applicant has not categorically mentioned whether they are arranging or facilitating supply of goods or services or both but has definitely stated that they connect GTRS with the customers and prospective customers in India. By connecting the customers/prospective customers with GTRS, the applicant is actually arranging or facilitating the supply of goods or services or both, between two or more persons. Further, the applicant will be liaising with the customers of GTRS and collect their Turbocharger & Engine Room Machinery Service & Spare parts specifications & requirements, strategy, & reporting the information obtained through such customer interactions to GTRS. Also the fact that, the applicant will be providing information on products & its functioning, etc., to GTRS's Customers and notifying GTRS of any consumer complaints and Monitor regulatory developments (including establishing and maintaining contact with regulatory agencies, etc.) satisfies condition number (ii) mentioned above.

5.5.6 Further, from the applicant's submissions it is clear that, they are not providing services on their own account. Actually, they appear to be providing the service of connecting the business of GTRS with customers with an intention of promoting such business of GTRS in India. Applicant will be connecting customers with representatives of GTRS for the purpose of business and other commercial discussions between Customer and GTRS. Hence it clearly appears that, the applicant is not acting on its own account rather acting on behalf of GTRS and therefore satisfies condition number (iii) mentioned above.

5.5.7 Since the applicant is satisfying all the conditions of an intermediary, we have no hesitation in holding that, the applicant is an intermediary. As per the provisions of Section 13 (8) of the IGST Act, 2017, we find that the place of supply in subject case of the applicant as an intermediary would be the location of the supplier of services i.e. the location of the applicant which is located in the State of Maharashtra, India.

5.6 As the place of supply of intermediary services to GTRS is location of applicant in India and consequently condition (iii) of export of services as per Section 2(6) of IGST Act is not satisfied. Therefore, the Question No. 2 asked by the applicant is to be answered in the negative.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1: - Whether Marketing Services agreed to be provided by the Applicant under Marketing Services Agreement agreed to enter into will constitute supply of 'Support Services' falling under HSN Code 9985 or as 'Intermediary Services' classifiable under HSN Code 9961/9962.

Answer: - The impugned service agreed to be provided by the Applicant will constitute supply of 'Intermediary Services' classifiable under HSN

Code 9961/9962.

Question 2: - Whether Marketing Services provided by the applicant is an export of services as defined under Section 2(6) of the Integrated Goods and Services Tax Act 2017.

Answer: - Answered in the negative in view of discussions made above.

PLACE:- Mumbai

DATE:- 27/04/2022

RAJIV MAGOO

T. R. RAMNANI

(MEMBER)

(MEMBER)

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