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2019 (29) G.S.T.L. 508 (A.A.R. - GST)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, MAHARASHTRA
S/Shri B. Timothy, Member (Central Tax) and B.V. Borhade, Member (State Tax)

IN RE : MAANSMARINE CARGO INTERNATIONAL LLP

Order No. GST-ARA-04/2019-20/B-97-Mumbai, dated 23-8-2019 in Application No. 4

Management fee - Taxability - Applicant arranging or facilitating business of its foreign client by liaising with customers for purpose of commercial relationships between service recipient and vessel owners, shippers, consignees, various port agents - Activities undertaken by applicant on behalf of foreign client and it fulfills criteria of Agent - Applicant is an intermediary in subject transaction - Place of provision of service in subject case to be location of supplier of services, i.e., applicant - Since place of supply is in taxable territory, applicant liable to discharge GST on such services provided by it - Sections 2(5) and 2(13) of Central Goods and Services Tax Act, 2017. [2019 (28) G.S.T.L. 172 (App. A.A.R. - GST) relied on]. [paras 5, 6]

Valuation (GST) - Reimbursement of expenses - Salaries of employees, rent of office expenses, other office expenses, travel and hotel stay expenses of employees reimbursed by foreign client on actual basis - Applicant making payments to vendors for supply received by them and not making payment to third party for services rendered by such third party to recipient of supply under a contract for supply - Recipient of supply not liable to make payment to third parties and therefore it can be said that applicant is not making payments on behalf of recipient of supply - Applicant not acting as pure agent - Reimbursement received by applicant pertains to establishment costs which would be incurred by it for running office in India - In any normal business such expenses are borne by supplier of service and naturally included in value to be received from recipient of their services - That such costs termed as reimbursements recovered in addition to management fees from clients are nothing but additional consideration charged for the supply - Valuation of supply to include all costs, including employee cost provided by one distinct entity to the other distinct entities - GST applicable on reimbursement of expenses - Section 15 of Central Goods and Services Tax Act, 2017. [paras 5, 7]

Departmental clarification - Circulars issued by Central Board of Direct Taxes not applicable to GST matters. [para 5]

Ruling in favour of department

CASE CITED

Asahi Kasei India Pvt. Ltd. — [2019 \(28\) G.S.T.L. 172](#) (App. A.A.R. - GST) — *Relied on*.... [Para 5]

DEPARTMENTAL CLARIFICATION CITED

C.B.I. & C. Circular No. 107/26/2019-GST, dated 18-7-2019..... [Para 5]

[Order]. - Proceedings : 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”] by M/S. MAANSMARINE CARGO INTERNATIONAL LLP, the applicant, seeking an advance ruling in respect of the following questions.

- (1) Whether we need to apply for GST registration as the services provided are export of services?
- (2) Whether can we do supply of such services under LUT?
- (3) Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?

- (4) Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?

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. and 3. * * * * *

[See text of paras 2 and 3 of this order in GST Council website.]

4. Hearing

Preliminary hearing in the matter was held on 7-5-2019. Sh. Manthan A. Ruparelia, C.A. appeared and requested for admission of their application. He has withdrawn Question Nos. 1 and 2. Jurisdictional Officer was not present for the preliminary hearing.

Application was admitted & called for final hearing on 2-8-2019. Sh. Manthan A. Ruparelia, C.A., appeared, made oral and written submissions. Jurisdictional Officer Sh. Rajesh Sharma supt., also appeared and made written submissions.

5. Observations

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office. Their queries are in respect of a proposed transaction to be undertaken by them.

The Question Numbers 1 and 2 have been withdrawn by the applicant and therefore we will take up for discussion, the issues in the Question Nos. 3 & 4 raised by the applicant which are as under :-

- (3) Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?
- (4) Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?

The applicant has submitted that they propose to enter into an outsourcing agreement through which they will provide backend services in respect of foreign business carried out by MSS Marine Ltd. in Hong Kong and the job includes : handling all communications between vessel Owners, shippers, consignees, various port agents, passing information to all parties with regards to vessel schedule and her operations, drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe, preparing reports on time used per voyage and presenting to shippers reports on additional time used per shipment, preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals, Reconciling accounts for their principal, as required, travel to various countries at principal's cost to meet with port agents, shippers, charterers to discuss operational efficiency.

To perform the above said work, applicant will be paid management fees & in addition to it they will also be reimbursed on actual basis, salary paid to their employees, office rent, other office expenses such as telephone expenses, electricity, purchasing computers, internet, office furniture, staff welfare, etc. & travel costs such as tickets, lodging boarding, etc.

They have submitted that the proposed agreement will separately mention, both management fees and other expenses to be reimbursed on actual basis. Further they have submitted that all the payments would be received in foreign convertible exchange.

The applicant has submitted a list of jobs that will be provided by them to their foreign client which includes handling all communications between vessel Owners, shippers, consignees, various port agents, passing information to all parties with regards to vessel schedule and her operations, drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe, preparing reports on time used per voyage and presenting to shippers reports on additional time used per shipment, preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals, travel to various countries at principals cost to meet with port agents, shippers, charterers to discuss operational efficiency, etc.

It is very clear from a reading of the work to be provided that the applicant is arranging or facilitating the supply of goods or services or both between various persons. As defined under Section 2(13) of the IGST Act, 2017 - *"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.*

It is evident that the applicant is arranging or facilitating the business of its foreign client by liaising with their customers for the purpose of commercial relationships between the service recipient and vessel Owners, shippers, consignees, various port agents. From their submissions, it is seen that certain activities are undertaken by the applicant on behalf of their foreign client, and they are seen as fulfilling the criteria of the Agent as defined under Section 2(5) of the CGST Act, 2017. It is also seen that the nature of the supply in this case does not show that the supply is being undertaken by the applicant on their own account, for example, when the applicant's personnel travel to various countries to meet with port agents, shippers, charterers to discuss operational efficiency they would be actually facilitating the supply of services between such persons. The travel to the various port agents, shippers, charterers would be on behalf of their client namely MSS Marine Ltd., Hong Kong and would report back the concerns, ideas, etc. of port agents, shippers, charterers to MSS Marine Ltd., Hong Kong. These services are not rendered on their own account. Further, handling communications between Vessel Owners, shippers, consignees, various

port agents, passing information to all parties with regards to vessel schedule, etc. is nothing but facilitating the supply between such persons. We do not agree with the applicant's submission that they are not arranging or facilitating the supply of goods or services or both to MSS Marine Ltd. We are of the view that the applicant is an intermediary in the subject transaction.

Our conclusion that the applicant is an intermediary, is fortified by the decision of the Appellate Authority for Advance Ruling, Maharashtra issued vide Order No. MAH/AAAR/SS-RJ/01/2019-20, dated 19th June, 2019 in the case of *Asahi Kasei India Pvt. Ltd.* [[2019 \(28\) G.S.T.L. 172](#) (App. A.A.R. - GST)].

Since we find that the applicant is an intermediary, as per the provisions of Section 13(8)(b) of IGST Act, the place of provision of the service in the subject case is the location of the supplier of services i.e. the applicant and since the place of supply is in taxable territory, we hold that they will be liable to discharge GST on such services provided by them. Therefore we hold that GST will be applicable on the management fees charged by the applicant. This would answer their Question Number 4.

Now we take up Question No. 3 which is as follows :-

Whether GST is applicable on reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?

The applicant has submitted that certain expenditure like salary of employees, rent of their offices, other office expenses and travel and hotel stay expenses of their employees for work purposes shall be reimbursed by MSS Marine Ltd. to them and are on actual basis done with prior approval of MSS Marine Ltd. Hence along with other arguments, the applicant has contended that such reimbursements are received by them in the capacity of a pure agent and is therefore not taxable under GST laws.

As per Rule 7 of Draft Determination of Value of Supply Rules the expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied :-

- (1) The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply.
- (2) The recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply.
- (3) The recipient of supply is liable to make payment to the third party.
- (4) The recipient of supply authorizes the supplier to make payment on his behalf.
- (5) The recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party.
- (6) The payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service.
- (7) The supplier recovers from the recipient of supply only such amount as has been paid by him to the third party and
- (8) The services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.

We have already found that the applicant is not a pure agent. In the subject case the applicant is making payments to vendors for supply received by them. The applicant is not making payment to the third party for the services rendered by such third party to the recipient of supply, under a contract for supply. In the subject case the recipient of supply is not liable to make payment to third parties and therefore it can be said that the applicant is not making payments on behalf of the recipient of supply. Hence it is seen that conditions mentioned at 1 to 3 above are not fulfilled in the subject case and therefore the applicant is not acting as a pure agent of the recipient of supply.

Further, the applicant has cited CBDT Circular No. 107/26/2019-GST of CBDT, dated 18th July, 2019 and have contended that they are providing ITes services as defined in Section 10TA of Income Tax Rules, 1962 to MSS Marine Ltd. on their own account. The said Circular is not applicable to GST Laws and therefore we are not discussing the same in this order.

The reimbursement received by the applicant pertains to establishment costs which would be incurred by them for running their office in India, in any normal business such expenses are borne by the supplier of service and it is but natural that they would include such costs in the value to be received from the recipient of their services. In the subject case the said costs, are termed as reimbursements and are recovered in addition to management fees from their clients and therefore it is nothing but additional consideration charged for the supply in this case. The provisions of Section 15 of the CGST Act, which deals with the transaction value are very clear and as per the said provisions the valuation of supply will include all costs, including the employee cost provided by one distinct entity to the other distinct entities.

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

ORDER

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

Question 1 : Whether we need to apply for GST registration as the services provided are export of services?

Answer : Withdrawn by the applicant.

Question 2 : Whether can we do supply of such services under LUT?

Answer : Withdrawn by the applicant.

Question 3 : Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?

Answer : Answered in the affirmative.

Question 4 : Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?

Answer : Answered in the affirmative.

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