



Dhruva Alert on Advance Ruling Back Office Support Services

VSERV GLOBAL PRIVATE LIMITED - Maharashtra¹

Issue	Issue: Whether the services proposed to be rendered by the Applicant qualify as 'zero rated supply' in terms of Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act').
Factual Matrix and Submissions	Facts: <ol style="list-style-type: none">The Applicant has proposed to undertake the following activity for and on behalf of its overseas clients once the client has finalised a purchase/sale order:<ul style="list-style-type: none">Communicate with the customer/vendor of the client to procure a sale/purchase detail form, generate purchase/sales order, send such purchase/sales order to the customer of its client and send/receive shipping instructions.Send a payment request to the customer of the client and follow up with the original documents sent to the customer from the group companies;Inform the customer on the tentative schedule of the receipt of goods;Liaise with the vendor of the client for cargo readiness and have the same inspected by inspection authorities, where necessary. Send payment requests to group companies of the client for the vendor of the client. Follow up with the vendor for shipping documents;Liaise with shipping companies and with inspection authorities;Provide the forwarder/carrier nomination to vendors if free on board;Raise the payment of freight and insurance charges as applicable;Notify the estimated time of arrival of the goods to the customers; andArrange to send all original documents to Hong Kong, i.e. the location of the client.

¹ Ruling No. GST-ARA-03/2018-19/B-59 dated 07.07.2018



2. Apart from the above, the Applicant wishes to additionally undertake the maintenance of accounts and records of employees of its clients, including the payroll. All payments to vendors are made directly by the clients and the accounts of the transaction are maintained by the Applicant.
3. The compensation of the same would either be a fixed fee, or a fee calculated on the basis of the volume of transactions handled.

Submissions:

- By the Applicant:
 - On the basis of the fact that the clients to whom the Applicant wishes to provide services are situated outside India, it was submitted that as per Section 13 of the IGST Act, the place of supply of services is outside India, and therefore the services are exported and are zero rated;
 - Additionally, the Applicant has submitted that they are not an 'intermediary' as defined in Section 8 of the IGST Act, since they provide services on their own account, and for this they have relied on the ruling in **GoDaddy India Web Services Private Limited** [2016(46) STR 806 (A.A.R.)]. They also submitted that the services are composite in nature and the primary service was that of back office support services, which were not intermediary services.
- By the Concerned Officer:
 - The Authority does not have the power or jurisdiction to decide on the place of supply under Section 97 of the Central Goods and Services Tax Act, 2017;
 - The client of the Applicant has an office in India and merely because the Applicant has entered into an agreement with an overseas office of the client is not sufficient to establish that there is an export of services.

Ruling

- The Authority for Advance Ruling ('AAR') ruled that the nature of services rendered by the Applicant involves liaising (being provided for and on behalf of clients), and that the Applicant is required to 'arrange or facilitate' a supply. Consequently, it was ruled that the Applicant is an 'intermediary'. The AAR ruled that the activities cannot be zero-rated, as these activities are not 'export of services', as defined (since the 'place of supply' is in India and not outside).

**Dhruva
Comments /
Observations**

- This ruling brings to the fore the issue of who can be / what nature of services can be considered to be that of an intermediary. Export of services by an intermediary cannot be zero-rated.
- This ruling reiterates the importance of documentation (contractual and commercial), which clearly brings out the intention of the parties as to whether main activities are undertaken / services are provided/to be provided on behalf of another person, so as to arrange and facilitate the other party's services. The scope of the term 'intermediary' thus has to be carefully examined in each fact circumstance, including documentation, so as to proactively rule out any tax exposure, as contemplated in this advance ruling. For persons undertaking back office services, such as payroll management, accounting, etc., it is important to establish that the services are (on a principal to principal basis) and not provided on behalf of (another) so as to constitute an intermediary.
- The GST officer had submitted that the AAR was not empowered to decide on the issue of place of supply since the empowering statutory provision did not allow for such an issue to be ruled upon; the AAR did not consider this jurisdictional objection and instead held that the place of supply (of an intermediary's service) is in India. In other instances, the same AAR declined to rule on the issue of the place of supply, see in Re: **Five Star Shipping** [GST-ARA-18/2017-18/B-26 dated 18.04.2018].



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