



Dimensions – 80th Edition

Ruling under GST era

M/s. Volvo-Eicher Commercial Vehicles Ltd. – Appellate Authority for Advance Ruling, Karnataka¹

Issue for Consideration

Who would be regarded as the recipient of warranty services i.e. the customer or the person with whom the agreement has been entered to provide the warranty services to the customer?

Discussion

- The Appellant is a joint venture between the Volvo Group and Eicher Motors Ltd. and is in the business of selling (distributor) Volvo branded trucks. The Appellant also provides after sales support services, including honouring of warranty claims by customers in respect of vehicles sold in India.
- The vehicle sold is covered by the international warranty provided by Volvo Sweden. The cost of servicing the warranty claims along with replacement of goods, if any, is reimbursed by Volvo Sweden.

- The Appellant had approached the Authority for Advance Ruling (“the Authority”) to contend that the said supply of warranty service which also includes replacement of parts, was a composite supply with principal supply being supply of service. Further, the Appellant also contended that the said service qualified as an export of service in terms of section 2(6) of the IGST Act, 2017.
- The Authority vide its order² held that the recipient of service were the customers in India and not Volvo Sweden, who only paid the consideration to the provider of services (i.e. the Appellant). Accordingly, the transaction also would not qualify as export of service.
- Aggrieved by the order, the Appellant filed the impugned appeal before the Appellate Authority for Advance Ruling (“the Appellate Authority”) and contended as follows:
 - In order to treat the amount paid by Volvo Sweden as consideration, for supply of service made to the customer, the same should flow at the desire of the customer. In the present case, reimbursement of warranty charges is being made pursuant to the arrangement between

¹ 2020-VIL-42-AAAR

² 2019-VIL-303-AAR



Volvo Sweden and the Appellant. Therefore, the finding of the Authority that the 'consideration' is being paid by Volvo Sweden to the Appellant for transaction between the Appellant and customer is factually and legally incorrect. Reference was also made to the Indian Contract Act, 1872 to state that the promisor and promisee should be in a contractually bound obligation for the consideration to flow in the contract.

- The activities undertaken during the warranty period are to meet the obligations of the manufacturer, even though the beneficiary may be the customer / buyer of vehicles. In this regard, reliance was placed upon the Tribunal judgment in the case of *Blue Star Ltd. v. Commissioner of Service Tax, Mumbai*³.
- Further, the acceptance of the warranty claim is at the behest of Volvo Sweden based on the documents sent to them for verification by the Appellant. Warranty service is provided to Volvo Sweden and not to the customer in India. Thus, Volvo Sweden is the 'recipient' of warranty service. Accordingly, the place of provision of service is outside India in terms of section 13 of the IGST Act, 2017, and the supply qualifies as export of service.
- The Appellate Authority observed that the dispute in the present case is with regard to who is the recipient of warranty service i.e. Volvo Sweden or the customer. The Appellate Authority after taking into account the business structure of the Appellant and the various agreements, observed as follows:
 - As per the Volvo Truck International warranty guidelines, it is the obligation of the manufacturer to provide the repair service and replacement of part where a complaint is lodged by the Customer with the distributor (i.e. the Appellant) during the warranty period. In this regard, the distributor, sends the details of warranty claim to Volvo Sweden who approves them and authorizes the Appellant to carry out the repair work for which the Appellant receives

the reimbursement of costs from Volvo Sweden.

- The Appellate Authority, on referring to the definitions of 'consideration' and 'recipient' under the CGST Act, 2017, held that the recipient of the service provided by the Appellant during the warranty period is Volvo Sweden, as it is at their behest that the Appellant has undertaken the activity of repair and / or replacement of parts to the customer and the reimbursement by Volvo Sweden is in the nature of consideration for such warranty services. Accordingly, the finding of the Authority that the recipient of warranty service is the customer is not correct. Further, the activity is a composite supply of goods and services where the principal supply is of supply of service.

Judgment

- Supply of warranty service by the Appellant to Volvo Sweden, being the recipient, is a composite supply of goods and services with the principal supply being supply of service.
- The determination of place of supply is not covered under section 97(2) of the CGST Act, 2017 and accordingly, the question as to whether the supply amounts to export of service is not answered.

Dhruva Comments:

The Appellate Authority has critically examined the term 'recipient' and distinguished a beneficiary from being construed as a recipient.

While the Appellate Authority refrained from determining whether the transaction qualifies as export of services or not, it is interesting to note that recently, Kerala High Court in the case of *Sutherland Mortgage Service Inc*⁴. had held that the determination of place of supply would come within the ambit of the larger issue of "determination of liability to pay tax on any goods or services or both" as envisaged in clause (e) of section

³ 2016 (46) STR 59 (Tri-Mum)

⁴ 2020 (3) TMI 186



97(2) of the CGST Act, 2017 and the matter was remitted back to the Authority.

Notification under GST era

Implementation of proviso to section 50(1) of the CGST Act, 2017⁵

- The Government vide the Finance (No. 2) Act, 2019 had inserted a proviso to section 50(1) of the CGST Act, 2017 to state that the interest payable, on account of late filing of the return under section 39 of the CGST Act, 2017 (except where the return is furnished after commencement of proceedings under section 73 / 74 of the CGST Act, 2017), should be levied only on the portion of the tax paid by debiting the electronic cash ledger.
- The Government has now notified that the said proviso will be applicable w.e.f. September 1, 2020.

Dhruva Comments:

Though the proviso would be applicable prospectively w.e.f. September 01, 2020, the CBIC has issued a press release dated August 26, 2020 to state that the same has been done due to certain technical limitations and no recoveries would be made for the past period as well, which is line with the decision taken in the 39th GST Council meeting.

⁵ Notification no. 63/2020-Central Tax dated August 25, 2020





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