

When Can Back Office Support Services Be Considered As Zero Rated Supply Under Section 16 Of Integrated Goods And Service Tax Act, 2017?

written by Pawan Khatri | December 11, 2018

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The Maharashtra Authority for Advance Ruling in its recent order in the case of Vservglobal Private Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at 502, Brahans Business Park, Near Peper Box MahalIndustrial Area, Aghadi Nagar, Andheri East Mumbai, Mumbai City- 400093 (hereinafter for the purpose of brevity be referred to as the "Applicant") held that if activities undertaken by back office support services to overseas companies are to facilitate the supply of goods and services between the client and its customers, it shall not be rendered to qualify as "Zero Rated Supply" in terms of Section 16 of the Integrated Goods and Service Tax Act 2017(hereinafter for the purpose of brevity be referred to as "IGST Act")

Background of the case

- The Applicant, having its corporate office in Mumbai was involved into the business of providing back-office support services to overseas companies (hereinafter for the purpose of brevity be referred to as "Clients") which are normally engaged in Trading of Chemicals and other products in International Trade.
- The services were co-ordination with Client`s suppliers/customers for execution of purchase and sales contracts, creation and arrangement of documentation (purchase order, sales contract, proforma invoice etc.) to be exchanged between Clients and their suppliers/customers, maintaining client employee records, payroll processing, accounting of payments made by clients to suppliers etc. The Applicant compensation was either fixed monthly or as per the volume of transactions.

Issues raised

The issue raised before the Maharashtra Authority for Advance Ruling is:

- Whether the services provided by the Applicant render to qualify as "Zero Rated Supply" in terms of Section 16 of IGST Act 2017 or not?

What is Zero Rated Supply, Export of Services and Intermediary as per the IGST Act?

- According to Section 16 of the IGST Act 2017, Zero rated supply means export of goods or services or both; or supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. A registered person making zero rated supply subject to such conditions, safeguards and procedure as may be prescribed shall be eligible supply such

goods or services without payment of integrated tax or can claim a refund of such tax paid on goods or services or both supplied.

- According to Section 2(6) of the IGST Act 2017, Export of services means the supply of any service when the supplier of service is located in India; the recipient of service is located outside India; the place of supply of service is outside India; the payment for such service has been received by the supplier of service in convertible foreign exchange, and the supplier of service and the recipient of service are not mere establishments of a distinct person in accordance with Explanation 1 in section 8.
- According to 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;
Contentions of the Applicant -
The Applicant claimed that the nature of services provided by them to their clients fulfills all the required conditions and fall in the purview of export of services and ultimately under zero rated supply on the grounds that –
- The supplier of services i.e. The Applicant is located in India, recipients of service were also located overseas i.e. different from the place of business, also fixed establishment of such recipients of service is different from the place of business, payment for services was made in convertible foreign exchange and that supplier and recipient were not mere establishments of distinct person. The applicant on being posed with the question of how the services rendered by them are not covered under the definition of ‘Intermediary Services’ stated that –
- The applicant falls under the exemption of definition of Intermediary as per the act as it provides services on its own account and that it would come into picture only after finalization of Purchase / Sale deals by the clients, services would be provided on Principle to Principle basis. The applicant also claimed that such services are composite supply, the tax liability of which should be levied as per section 8 of the CGST Act. The applicant also cited GoDaddy India Web Service Private Ltd^[1] claiming it to be identical to the present case wherein the authority observed that the applicant proposed to provide support services in relation

to marketing, branding, offline marketing, oversight of the quality of third-party customer care Centre and payment processing, on principal to principal basis. The Authority accepted that the said services are bundled as a package in the natural course of business and are not intermediary service.

Contentions

of the Concerned Officer –

- The officer claimed that M/s Vikudha Overseas Corporation Limited i.e. the claimed recipient of service also has an Indian sister company M/s Vikudha India Trading Limited i.e. the actual recipient of service, having its registered office in Mumbai. And the COO of M/s Vikudha Overseas Corporation Limited Mr. Deap Balkishan Adukia is also the Director of M/s Vikudha India Trading Limited.
- The officer further claimed that said services were being provided to M/s Vikudha India Trading Limited and not to M/s Vikudha Overseas Corporation. Hence, technically the services were not being exported but were a series of intrastate transactions and only mere agreement by a foreign company with an Indian company is not sufficient to determine Export of services.
- The officer also claimed that on seeing the bank account of the M/s Vservglobal Pvt Ltd, payment for such services was not being received by the supplier of service in convertible foreign exchange which further establishes that services were not being exported.
- The officer also claimed that as per distinct person provision, M/s Vikudha Overseas Corporation Limited, and M/s Vikudha India Limited, and M/s Vservglobal Pvt Ltd, are not a distinct person, for this provision, hence their transactions do not qualify as export of services, and ultimately as “Zero rated supply”, it is rather Intra-state supply of services.

Judgement

The authority observed

on the basis of information submitted by the officer that all the above firms are related companies and applicant is providing services to M/s. Vikudha India

Trading Limited which happens to be a sister concern located in India. Hence, there is no export of services contended by the applicant.

The authority observed

that decision relied upon by the applicant i.e. Godaddy India Web services Pvt

Ltd(supra) has very different facts from the present case as Godaddy was being

provided support services on principal to principal basis with sole intention of promoting the brand Godaddy US in India whereas in the present case, the activities undertaken by the applicant are to facilitate supply of goods and services between the clients and their customers.

The authority held that

sum of all activities mentioned by the applicant indicates that it arranges or facilitates the supply of goods or services or both. Therefore, it is covered and falls in the definition of an intermediary as per the IGST Act. Hence the supply of services by the applicant cannot be considered as “Zero Rated Supply”.

Analysis

The observation of authority that services provided by the applicant do not render to qualify as “Zero Rated Supply” on the ground that not all conditions of Export of Services

are being fulfilled seems to be valid and reasonable. However, it seems unreasonable to hold that the back-office support services as listed by the applicant are of the nature of intermediary services which facilitate the supply of goods or services or both. The stand taken by the Maharashtra AAR is contrary to the position taken by the revenue department in the previous service tax regime.

Conclusion

The approach taken by the authority, considering back office support services as of an intermediary can pose a serious threat to many entities engaging in providing back office support services to various foreign and overseas entities. If the new tax regime

(GST Law) treats export of back office support services as of an intermediary, an additional increase of 18% tax on their cost can affect their competitiveness in comparison to such firms in other countries to a large extent. It will also add to lower India’s ease of doing business in the global context due to the lack of transparent and clear tax laws.

[1] 2016 (46) S.T.R. 806 (A.A.R.)

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