Commissioner, CGST, Mumbai East (Appellant), against NES Global Specialist Engineering Services Private Limited (Respondent)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/03/2019-20, Date-02.08.2019 Dated **02.08.2019**

Q Questions Before the Authority

- Whether the transaction in question (services to NES Abu Dhabi under the proposed agreement) was a zero-rated supply or a normal supply under the GST Act.
- If the supply was zero-rated, whether the same could be considered an export of service under the GST Act.

F Facts

The respondent, NES Global Specialist Engineering Services Pvt. Ltd., supplies manpower services to technical industries such as oil and gas and power. It proposed to provide back-office and support services, including visa and immigration bookings, accounting, bank and vendor reconciliation and payroll assistance, to NES Global Talent Recruitment Services (NES Abu Dhabi), a sister concern based in Abu Dhabi. The arrangement was documented in a draft intercompany service agreement, which the respondent later stated was to be treated as the master service agreement.

H Ruling

The Appellate Authority set aside the impugned Advance Ruling No. GST-ARA-52/2018-19/B-160 dated 19.12.2018, which had held the transaction to be a zero-rated export of services. It held that the questions raised were **outside the scope and jurisdiction** of the advance ruling authority because they require determining the place of supply, so no advance ruling can be passed on them.

R Reasoning

The Appellate Authority condoned the 26-day delay in filing the appeal under the proviso to sub-section (2) of section 100 of the CGST Act. It then read section 97(2) of the CGST Act, which lists the permitted subjects of an advance ruling, and found that place of supply is not among them. Under section 2(6) of the IGST Act, a supply is an export of services only if the place of supply is outside India, so deciding whether the transaction is an export or zero-rated requires a place-of-supply determination. The authority therefore held that the advance ruling authority should have declined to answer both questions rather than ruling on them.

P Provisions Relied On

Section 97(2) of the CGST Act, 2017 (permitted questions for advance ruling)

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Section 100 of the CGST Act, 2017, including the proviso to sub-section (2) (appeal and condonation of delay)

Section 2(6) of the IGST Act, 2017 (definition of export of services)

Section 16 of the IGST Act, 2017 (zero-rated supply, as referred to in the impugned ruling)

! For the Practitioner

This order is useful where an advance ruling on export or zero-rating turns on the place of supply, since the Maharashtra Appellate Authority treats that question as outside section 97(2). It supports a jurisdictional objection to such applications, and the Asahi Kasei order of 19.06.2019 is cited for the same point. It does not decide whether the respondent acted as agent or principal, whether the intercompany agreement qualifies as an export, or whether the services are zero-rated; those questions remain for assessment.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mh_aaar_ss-rj_03_2019-20_nes_gsespl_02.08.2019.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com