Commissioner, CGST, Mumbai East (Appellant); Asahi Kasei India Pvt. Ltd. (Respondent)

Appellate Authority for Advance Ruling — Maharashtra

Order No. MAH/AAAR/SS-RJ/01/2019-20, dated 19.06.2019 (appeal No. M… Dated **19.06.2019**

Q Questions Before the Authority

- Whether the service supplied under the Service Agreement dated 1 March 2013 is a supply of 'Support Services' under HSN 9985, or an 'Intermediary service' classifiable under HSN 9961/9962?
- Whether the service supplied under the Marketing Services Agreement dated 1 December 2012 is a supply of 'Support Services' under HSN 9985, or an 'Intermediary service' classifiable under HSN 9961/9962?
- Whether the service provided by the Respondent is an export of services as defined under Section 2(6) of the IGST Act, 2017?

F Facts

The Respondent, an Indian subsidiary of Asahi Kasei Corporation, Japan, provides services to its parent and to Asahi Kasei Medical's Bioprocess Division under two agreements. The Service Agreement with the parent (dated 01.03.2013, amended 05.01.2017) covers accounting, finance, HR, R&D, quality assurance, market information and surveys, and liaison with customers. The Marketing Services Agreement (dated 01.12.2012) covers market surveys, advertising support, sales prospection, customer connection and regulatory monitoring. Under Clause 9 of the Service Agreement, consideration is direct cost plus prorated overheads plus a 10% mark-up, invoiced as a single consolidated invoice.

H Ruling

Q1: Service Agreement dated 01.03.2013 – support services (HSN 9985) or intermediary (HSN 9961/9962)	****Mixed supply** of services under SAC 9982 (accounting services) and SAC 9983 (other professional, technical and business services)**	The operative ruling does not classify this supply as intermediary service. The reasoning at paras 32 to 39 finds the intermediary ingredients met for certain activities, but the ruling does not adopt that as the answer.
Q2: Marketing Services Agreement dated 01.12.2012 – support services (HSN 9985) or intermediary (HSN 9961/9962)	****Mixed supply** of services under SAC 9981 (R&D services), SAC 9983 (other professional, technical and business services) and SAC 9997 (other miscellaneous services)**	Not a composite supply, because the services are not naturally bundled (para 40). The AAR's Market Research (SAC 9837 / 99837) classification is not adopted.

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

Q3: Whether the service is an export of services under Section 2(6) IGST Act, 2017	**No ruling given**	The authority held that place of supply is outside its jurisdiction under Section 97(2) CGST Act, so the AAR was wrong to decide export status.

The Appellate Authority modified the AAR ruling. It held that the Service Agreement supply is a mixed supply under the accounting and other professional, technical and business services headings, and that the Marketing Services Agreement supply is a mixed supply under the R&D, other professional and other miscellaneous services headings. It declined to rule on export of services, holding that determining place of supply is outside the Advance Ruling Authority's jurisdiction.

R Reasoning

The Authority first held the application maintainable under Section 98(2) CGST Act, rejecting the Department's argument that a DGGI enquiry was pending, because the enquiry concerned only pre-GST service tax. On the merits it found the Service Agreement and Marketing Services Agreement supplies to be mixed supplies under Section 2(74), since the individual services could be supplied separately and were not naturally bundled. It classified the services by SAC headings. On export, it held that Section 97(2) does not extend to place of supply, so the AAR had exceeded its jurisdiction. The order is modified under Section 101(1) to that extent.

P Provisions Relied On

- Section 97(2) CGST Act, 2017
- Section 98(2) CGST Act, 2017
- Section 100(2) CGST Act, 2017 (proviso on condonation of delay)
- Section 101(1) CGST Act, 2017
- Section 2(5) CGST Act, 2017 (agent)
- Section 2(13) IGST Act, 2017 (intermediary)
- Section 2(74) CGST Act, 2017 (mixed supply)
- Section 2(6) IGST Act, 2017 (export of services)
- Notification No. 11/2017-C.T. (Rate), dated 28.06.2017 (SAC scheme)

! For the Practitioner

The order helps a service provider in a group company arrangement that bundles several services under one consolidated invoice. It supports treating such bundles as mixed supplies under specific SAC headings rather than as a single support service. It does not settle intermediary status, because the operative ruling does not adopt the intermediary analysis in its reasoning. It also does not decide export status, which the Authority held it cannot rule on. Practitioners should check the full order before relying on the intermediary reasoning.

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 -> mah_aaar_ss-rj_01_2019-20.pdf

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