M/s. Infinera India Pvt Ltd (appellant, as printed; the listing gives 'Infinera India Pvt Ltd')

Appellate Authority for Advance Ruling — Karnataka

ORDER NO.KAR/AAAR-09/2019-20, DATE: 20.01.2020 Dated **20.01.2020**

Q Questions Before the Authority

- Whether the activities carried out in India by the applicant under the Pre-Sales and Marketing Services Agreement qualify it as an 'intermediary' under Section 2(13) of the IGST Act, 2017, and consequently make it liable to GST. (Question as framed in the Advance Ruling appealed from, KAR/ADRG 31/2019 dated 12-09-2019.)

F Facts

The appellant is a 100% Export Oriented Unit under the STPI scheme and a wholly owned subsidiary of Infinera Corporation, USA. Under a Pre-Sales and Marketing Services Agreement dated 1 April 2011, it provides sales promotion, market research and customer-related information services in India for optical networking equipment developed by its US parent. It is paid on a cost-plus-15% basis, and the parent's team handles bidding, supply, installation and integration.

H Ruling

Whether the appellant's India-based pre-sale and marketing activities make it an 'intermediary' under Section 2(13) of the IGST Act and subject to GST	**Yes. Appeal dismissed; Advance Ruling KAR/ADRG 31/2019 upheld**	The order contains no rate or HSN. The document has no RULING section in Q/Ans form, so this row reflects the ORDER paragraph (para 26) and the findings at para 25.

The Appellate Authority dismissed the appeal and upheld the Advance Ruling. It held that the appellant's pre-sale and marketing activities facilitate the supply of the parent's products to customers in India, so the appellant is an intermediary under Section 2(13) of the IGST Act. The exclusion for a person supplying goods or services on his own account does not apply.

R Reasoning

The Authority rejected the appellant's argument that 'any other person, by whatever name called' must be read down under noscitur a sociis or ejusdem generis, holding that broker and agent are not a class that can limit the phrase. It read 'arranges or facilitates' in its ordinary sense, relying on dictionary meanings, and found that the appellant meets prospective customers in India, demonstrates the products, and relays feedback to the parent, so it facilitates the supply between the parent and Indian customers. It held that the 'own account' exclusion covers only a person who supplies such goods or services on his own account, and the appellant does not supply the products itself. It distinguished the GoDaddy ruling under the service tax regime and the Asahi Kasei ruling under GST, noting that the contractual labels did not control the actual role shown in the BAPA extract.

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

P Provisions Relied On

- Section 2(13) of the IGST Act, 2017 (definition of 'intermediary')
- Section 2(5) of the CGST Act, 2017 (definition of 'agent')
- Section 99 of the KGST Act, 2017 (constitution of the Authority)
- Section 100 of the CGST/KGST Act, 2017 (appeal)
- Section 101 of the CGST/KGST Act, 2017 (orders of the Appellate Authority)
- Rule 2(f) of the Place of Provision of Services Rules, 2012 (pre-GST definition of intermediary, compared)

! For the Practitioner

The order is useful for a practitioner advising a foreign group's Indian marketing or pre-sales subsidiary that is paid on a cost-plus basis. It shows that the Authority reads 'arranges or facilitates' broadly and treats the contractual label of principal-to-principal as not decisive where the actual activity links the foreign principal with Indian customers. It does not decide whether a pure market-research or promotion-only arrangement, with no customer-facing role, is an intermediary service, and it does not address the export-of-service treatment under Section 2(6) or the IGST Act's place-of-supply rules.

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 -> kar_aaar_09_2019-20_20.01.2020.pdf

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