Mayank Jain (Appellant), appealing against Advance Ruling No. GST-ARA-103/2018-19/B-63 dated 01.06.2019

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/17/2019-20 Dated **20.11.2019**

Q Questions Before the Authority

- Whether the marketing services to be supplied by the Appellant to a Consultant Manager under the proposed Foreign Immigration Advisor Agreement constitute 'support services' under SAC 9985 or 'intermediary service' under SAC 9961/9962 or any other heading.
- Whether the handholding services to be supplied by the Appellant under the same agreement constitute 'support services' under SAC 9985 or 'intermediary service' under SAC 9961/9962 or any other heading.
- Whether the marketing services to be provided by the Appellant will be an export of services under Section 2(6) of the IGST Act, 2017.
- Whether the handholding services to be provided by the Appellant will be an export of services under Section 2(6) of the IGST Act, 2017.

F Facts

The Appellant, an individual, proposed to provide marketing and handholding services to a Consultant Manager located in the USA. The Consultant Manager acts for EB-5 Regional Centres or companies that receive investments from foreign investors seeking US permanent residence. The Appellant would market the EB-5 programme to prospective investors in India and, after a proposed investment is confirmed, assist them with documentation and immigration formalities. Consideration is contingent on successful investment or repatriation.

H Ruling

Marketing and handholding services: SAC 9985 (support services) or SAC 9961/9962 (intermediary) or other heading	**Intermediary services, classifiable under heading 9997 (other services)**	The order treats both marketing and handholding as a single gamut of intermediary activity. It does not separately rule on SAC 9961/9962 and does not accept SAC 9985.
Marketing services as export of services under Section 2(6) IGST	**No ruling given; the question is beyond the jurisdiction of the Authority**	The place of supply under Section 13(8)(b) IGST is in India, which the order treats as outside Section 97. The discussion on this point is obiter in the sense that it was not decided as a ruling.
Handholding services as export of services under Section 2(6) IGST	**No ruling given; the question is beyond the jurisdiction of the Authority**	Same reasoning as for marketing services.

The Appellate Authority held that the entire gamut of activities performed by the Appellant under the subject agreement are those of an intermediary as defined in Section 2(13) of the IGST Act, 2017, and would be

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

classified under heading 9997 as other services. It modified the AAR ruling accordingly. On the export question, it held that no advance ruling can be given because the place of supply is beyond the scope of an advance ruling under Section 97 of the CGST Act.

R Reasoning

The Appellate Authority condoned a two-day delay in filing the appeal, finding it was bona fide. On classification, it held that the Appellant facilitates the supply of the main service, namely investment consultancy, between the Consultant Manager and investors, and that this facilitation falls within the 'arranges or facilitates' limb of Section 2(13) IGST. It rejected the argument that the Appellant must act as an agent or broker, reasoning that under GST agent and intermediary are distinct concepts, and that 'intermediary' does not require the person to act as an agent. It relied on CBIC Circular No. 107/26/2019-GST dated 18.07.2019, Scenario II, and distinguished Sunrise Immigration, Evalueserve, GoDaddy and Asahi Kasei. On export, it held that place of supply under Section 13(8)(b) IGST is outside the scope of Section 97(2) CGST, so no ruling could be given.

P Provisions Relied On

- Section 2(13) IGST Act, 2017 (definition of intermediary)
- Section 2(5) CGST Act, 2017 (definition of agent)
- Section 2(6) IGST Act, 2017 (export of services)
- Section 13(8)(b) IGST Act, 2017 (place of supply of intermediary services)
- Section 7(1)(a) CGST Act, 2017 (scope of supply)
- Section 97 CGST Act, 2017 (scope of advance ruling)
- Section 99 CGST Act, 2017 (constitution of the Appellate Authority)
- Section 100 CGST Act, 2017 (appeal and proviso on condonation of delay)
- Place of Provision of Services Rules, 2012, Rule 2(f) (intermediary, erstwhile regime)
- CBIC Circular No. 107/26/2019-GST dated 18.07.2019

! For the Practitioner

This order is useful for Indian service providers who market or facilitate offshore investment or immigration programmes for foreign clients on a success-fee basis. It supports the view that such activity is intermediary service under Section 2(13) IGST, not independent marketing or business support, and that the 'own account' exclusion does not apply merely because the provider contracts on its own behalf. It does not decide whether the services are export of services or what their place of supply is, so those questions remain open. Counsel should also note that the order is an appellate decision and that the Authority's reliance on Scenario II of the CBIC circular is central to its 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_17_2019-20_20.11.2019.pdf

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