Micro Instruments (GSTIN 27AAACS0730L1ZG), appellant and applicant for rectification

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/26A/2018-19, Date 11.12.2019 (the impug… Dated **11.12.2019**

Q Questions Before the Authority

- Whether the AAAR order dated 22.03.2019 suffers from an error apparent on the face of the record, because the Authority held it lacked jurisdiction to determine the place of supply under section 97(2) and did not consider the true meaning of 'intermediary services'.
- Whether the AAAR failed to consider CBIC Circular No. 107/29/2019-GST dated 18.07.2019, which excludes from 'intermediary' a person supplying services on his own account, and whether that Circular should have changed the outcome.
- Whether the Board's clarificatory Circular dated 18.07.2019, issued under section 168(1), is binding on the department and operates retrospectively, so that the impugned order should be amended in line with it.
- Whether the Board's withdrawal of Circular No. 107/26/2019-GST dated 18.07.2019 with effect from 04.12.2019 operates prospectively only, or ab initio.

F Facts

The applicant, Micro Instruments of Mumbai, acts as a facilitator for foreign principals selling material to Indian parties. It locates customers, negotiates prices and secures probable sales, and receives a commission. The applicant sought an advance ruling on whether these services are export of services or an intra-state supply under the IGST Act, and the AAR ruled on 10.08.2018. The AAAR disposed of the appeal on 22.03.2019, holding that the place of supply was not a question on which it could rule under section 97(2). The applicant then sought rectification under section 102 on 23.08.2019.

H Ruling

The Authority rejected the rectification application. It held that the alleged errors were not errors apparent on the face of the record, because the dispute concerns the interpretation of section 97(2)(e) and is a debatable legal point. It also held that the earlier order was not shown to have been passed without applying the mind to the relevant law. The Authority did not decide the substantive question of whether the applicant's services are intermediary services or export of services.

R Reasoning

The Authority followed the rule that rectification under section 102 lies only for a mistake apparent from the record, following Sir Hari Shankar Pal, T.S. Balaram, Parsion Devi and the CESTAT Larger Bench in Dinkar Khindria. It held that section 97(2)(e) empowers an advance ruling only on whether goods or services are liable to tax, and not on place of supply, so the earlier order's jurisdictional view was not a manifest error. Since the scope of section 97(2)(e) and the meaning of 'intermediary' are debatable, a rectification application cannot correct

them. The Authority also held that the Board circular issue is not a ground for rectification of this kind, and it did not decide whether the circular operates retrospectively.

P Provisions Relied On

- Section 102 of the CGST Act, 2017 and the MGST Act, 2017 (rectification of advance ruling)
- Section 97(2)(e) of the CGST Act, 2017 (questions on which advance ruling may be sought)
- Section 168(1) of the CGST Act, 2017 (power of the Board to issue instructions)
- Section 2(13) of the IGST Act, 2017 (definition of intermediary)
- Section 13(8)(b) of the IGST Act, 2017 (place of supply of intermediary services)
- Section 2(6) of the IGST Act, 2017 (export of services)
- Sections 7, 8(2) and 12 of the IGST Act, 2017 (inter-state and intra-state supply, place of supply)
- Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (review, by analogy)
- Notification No. 2/2017-C.T.(Rate) and Notification No. 12/2017-C.T.(Rate), both dated 28.06.2017 (as cited in para 36)
- CBIC Circular dated 18.07.2019 (number cited inconsistently in the order as 107/29/2019-GST and 107/26/2019-GST)
- CBIC withdrawal circular dated 04.12.2019

! For the Practitioner

This order confirms that the AAAR will not reopen an advance ruling under section 102 merely because a later Board circular or a different reading of section 97(2) is available, since the test is an error apparent on the record. It is useful to a practitioner who needs to know that rectification will not be a route to correct a ruling on a debatable jurisdictional point. It does not decide whether the applicant's services are intermediary services, export, or intra-state supply, and it does not decide whether a clarificatory Board circular applies retrospectively.

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_26a_2018-19_11.12.2019.pdf

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