Sabre Travel Network India Pvt Ltd (Appellant)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/30/2018-19, Date 10.04.2019 (appeal No.… Dated **10.04.2019**

Q Questions Before the Authority

- Whether the marketing, promotion and distribution services provided by Sabre India to Sabre APAC would be subject to tax under the CGST Act 2017 and the MGST Act 2017, or would remain excluded as export of services under Section 2(6) of the IGST Act 2017 read with those Acts.

F Facts

The Appellant, an Indian subsidiary of Sabre APAC (Singapore), holds a non-exclusive marketing right under a Marketing Agreement dated 31 October 2016 to promote the CRS Software in India, and is paid by Sabre APAC on a cost-plus-markup basis in convertible foreign exchange. Its activities include identifying potential subscribers (travel agents), carrying out organisational and workflow analysis, logging non-binding requests on Sabre APAC's SCMS portal for a Pseudo City Code, and installing interfaces once Sabre APAC accepts a subscriber. The Appellant contends that it acts on its own account on a principal-to-principal basis, while the Authority below treated it as an intermediary facilitating supply of OIDAR services from Sabre APAC to Indian subscribers.

H Ruling

Whether the Appellant's marketing, promotion and distribution services to Sabre APAC form a composite supply, and what the principal supply is	**Entire gamut of activities is a composite supply under Section 2(30) of the CGST Act; principal supply is intermediary services**	The Appellate Authority agreed with the Appellant that the activities are naturally bundled, but held that the principal supply is intermediary service, with the other activities ancillary or incidental.
Whether the supply to Sabre APAC (Singapore) is an export of services under Section 2(6) of the IGST Act	**No ruling given**	The Authority held it has no jurisdiction under Section 97(2) to decide the place of supply, a prerequisite to determining export, and so did not decide the question.

The Appellate Authority held that the entire gamut of the Appellant's activities is a composite supply in which intermediary services are the principal supply. It declined to decide whether the supply to Sabre APAC is an export, because the place of supply under Section 13 of the IGST Act is outside the advance ruling jurisdiction under Section 97(2). The AAR ruling is therefore modified to this extent and no ruling is given on export or place of supply.

R Reasoning

The Authority held that the Appellant acts as an agent under Section 2(5) of the CGST Act because it carries on the business of supply of OIDAR services on behalf of Sabre APAC by identifying subscribers and initiating

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

subscription, and that it arranges or facilitates the supply under Section 2(13) of the IGST Act. It found that Article 11 of the Marketing Agreement (no partnership or agency) does not control the substance of the relationship, relying on the principle that intention prevails over words in G.S. Lamba & Sons. It applied the ejusdem generis rule to read 'by whatever name called' as covering persons in the nature of brokers or agents, and distinguished the GoDaddy and Universal Services rulings. It did not follow the West Bengal AAAR ruling or the Maharashtra AAAR Five Star Shipping ruling. On export, it held that Section 97(2) does not empower it to determine the place of supply under Section 13 of the IGST Act.

P Provisions Relied On

- Section 2(5) CGST Act 2017 (agent)
- Section 2(13) IGST Act 2017 (intermediary)
- Section 2(30) CGST Act 2017 (composite supply)
- Section 2(6) IGST Act 2017 (export of services)
- Section 13 IGST Act 2017 (place of supply of services), including Section 13(2) and Section 13(8)(b)
- Section 8 IGST Act 2017, Explanation 1 (establishments of distinct persons)
- Section 16 IGST Act 2017 (zero-rated supplies)
- Section 97(2) CGST Act 2017 (scope of advance ruling)
- Section 101 CGST Act 2017 (appellate authority)

! For the Practitioner

This order is useful for practitioners advising digital marketing or referral intermediaries on whether a principal-to-principal contract label will displace the substance of an arrangement, since the Authority looked past Article 11 of the agreement to the actual activities. It also shows that the Authority will treat identification of end customers and initiation of subscriptions as arrangement or facilitation of supply. It does not decide the export or place-of-supply question, which the practitioner must still analyse under Sections 2(6) and 13 of the IGST Act on its own. The order is an appellate decision on a 2018 ruling and binds only the parties to it, though it is persuasive on intermediary characterisation.

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_30_2018-19.pdf

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