M/s. Toshniwal Brothers (SR) Private Limited (printed as 'Toshniwal' in the order; the listing has 'Toshiwal')

Appellate Authority for Advance Ruling — Karnataka

ORDER NO.KAR/AAAR/06/2018-19 DATE: 09/01/2019 (printed on the cov… Dated **01.01.2019**

Q Questions Before the Authority

- Whether pure promotion and marketing services provided to an overseas principal are 'intermediary services' for the purpose of determining the place of supply under section 12 of the IGST Act, 2017.
- Whether after-sales support services provided under a composite contract together with promotion and marketing services amount to a composite supply and, if so, what is the principal supply.
- Whether the contracts qualify as exports under section 2(6) of the IGST Act, 2017 and are zero-rated under section 16 of that Act.

F Facts

The appellant, an Indian company, markets and promotes scientific instruments of Brabender GmbH & Co. KG, Germany, in India under an agency contract that gives it exclusive agency for the territory and a commission of 12% (or 6%) of the value of goods sold. It also provides installation and warranty support, with 25% of the commission allocated to those services. Consideration is received in convertible foreign exchange. The appellant argued that it supplies these services on a principal-to-principal basis to the overseas entity, so it is neither an agent nor an intermediary.

H Ruling

Q1: Are pure promotion and marketing services 'intermediary services' for place of supply?	**Yes. The services are intermediary services under section 2(13) of the IGST Act (order upheld).**	The order says that, on this classification, the place of supply is determined under section 13(8) of the IGST Act. The order has no separate RULING section; this row is taken from the findings at paragraphs 18.11 and 24.
Q2: Is after-sales support under the same contract a composite supply, and what is the principal supply?	**No. After-sales support is not a composite supply with promotion and marketing, so no principal supply is identified.**	The Authority relied on the separate price for after-sales support stated in the contract, and on the fact that installation is not required on every sale. Taken from paragraph 19.3.
Q3: Do the contracts qualify as exports under section 2(6) IGST and are they zero-rated under section 16?	**No ruling given. The question was not answered.**	The Authority held that place of supply is not a matter covered by section 97(2) of the CGST/KGST Act and that it therefore had no jurisdiction. Taken from paragraphs 20 to 21 and the concluding discussion at page 27.

The Appellate Authority dismissed the appeal and upheld the Advance Ruling Authority's order dated 19 September 2018 in full. It held that promotion and marketing services for the overseas principal facilitate the

supply of goods and are intermediary services under section 2(13) of the IGST Act. It held that after-sales support is not a composite supply with promotion and marketing, so no principal supply needs to be identified. It declined to rule on the export and zero-rating question because it concerns place of supply, which is outside the Authority's jurisdiction.

R Reasoning

The Appellate Authority read the 'arrange or facilitate' limb of section 2(13) IGST broadly, using dictionary meanings and Grasim Industries (Supreme Court, 2002). It found that the appellant's marketing and price negotiation facilitate the principal's supply to Indian customers, and that the agency contract's commission structure confirms this. It distinguished the GoDaddy advance ruling under service tax, which concerned a different factual matrix. On composite supply, it held that the after-sales element is separately priced and not inextricably linked to the promotion services. On export and zero-rating, it held that the question turns on place of supply, which section 97(2) does not allow the Authority to decide.

P Provisions Relied On

- Section 2(13) IGST Act, 2017 (definition of intermediary)
- Section 13(8) IGST Act, 2017 (as stated in the order)
- Section 2(6) IGST Act, 2017 (export of services)
- Section 16 IGST Act, 2017 (zero-rated supply)
- Section 2(30) CGST Act, 2017 (composite supply)
- Section 2(5) CGST Act, 2017 (agent)
- Section 2(93) CGST Act, 2017 (recipient of supply)
- Section 97(2) CGST/KGST Act, 2017 (scope of advance rulings)
- Section 96 and section 99 KGST Act, 2017 (constitution of the Authority)
- Section 100 CGST/KGST Act, 2017 (appeal)
- Rule 2(f) Place of Provision of Services Rules, 2012 (intermediary, pre-GST)
- Grasim Industries Ltd v Collector of Customs, Bombay (Supreme Court, 2002)
- GoDaddy India Web Services (P) Ltd, AAR ruling (service tax regime), distinguished
- Five Star Shipping, AAR Maharashtra (2018), cited by the appellant

! For the Practitioner

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

This order is useful for Indian service providers who market goods for overseas principals on commission, because it shows that the Karnataka appellate bench will treat such activity as facilitating supply and therefore as an intermediary service. It also shows that a separately priced after-sales element will not be treated as composite with the marketing element. It does not decide the place of supply, the export status, or the zero-rating of such services, and those questions must be taken up elsewhere. The 25% allocation finding is fact-specific and should not be read as a general rule.

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_06-2018-19-toshiwal_brothers.pdf

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