Asahi Kasei India Private Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-35/2018-19/B-108, Mumbai, dt. 05/09/2018 (as printed in the… Dated **07.09.2018**

Q Questions Before the Authority

- Whether the services supplied under the Service Agreement dated 1 March 2013 constitute a supply of 'Support services' falling under HSN 9985, or 'Intermediary service' classifiable under HSN 9961/9962?
- Whether the services supplied under the Marketing Services Agreement dated 1 December 2012 constitute a supply of 'Support services' falling under HSN 9985, or 'Intermediary service' classifiable under HSN 9961/9962?
- Whether the services provided by the Applicant are an export of services as defined under Section 2(6) of the IGST Act, 2017?

F Facts

The applicant, an Indian subsidiary of Asahi Kasei Corporation, Japan, provides sales promotion, market research and back-office support to Asahi Kasei group companies. It works under a Services Agreement dated 1 March 2013 with the Japanese parent and under Marketing Services Agreements with several group entities, including one dated 1 December 2012 with the Bioprocess Division of Asahi Kasei Medical Co. Ltd. The agreements say the parties are independent contractors, and the applicant is paid cost plus overhead plus a 10% mark-up in foreign currency.

H Ruling

Q1: Services under the Service Agreement dated 1 March 2013 (support services under HSN 9985 or intermediary services under HSN 9961/9962)	**Not an intermediary service. Research on holding-company functions falls under service code 99859 (other support services nowhere else classified). Market information and market surveys fall under service code 99837 (market research services).**	The reasoning section gives the research code as 998599, while the answer gives 99859. The scan is not fully clear on this digit, so check the full order.
Q2: Services under the Marketing Services Agreement dated 1 December 2012 (support services under HSN 9985 or intermediary services under HSN 9961/9962)	**Not an intermediary service. The services fall under Group 99837 as market research services.**	The authority treats the bundle as a composite supply with market research as the principal supply. Services the applicant described as ancillary or unclassified were not separately ruled on.

Q3: Whether the services are an export of services under Section 2(6) IGST	**Yes, answered in the affirmative.**	The authority found that the supplier is in India, the recipient is outside India, the place of supply is outside India, payment is in convertible foreign exchange, and the parties are not merely distinct-person establishments. The prayer section notes that some listed services may not meet the test, so the answer is not unqualified.

The authority held that the applicant is not an intermediary under Section 2(13) IGST, because it does not arrange or facilitate supplies between two persons and acts on its own account. Services under the Service Agreement were classified as other support services and market research, and services under the Marketing Services Agreement were held to fall under Group 99837 as market research services. The authority also answered the export question in the affirmative.

R Reasoning

The authority applied the intermediary definition in Section 2(13) IGST and the CBEC Education Guide 2012 to hold that the applicant does not arrange or facilitate supplies between two persons. It relied on the independent contractor clause, which excludes any agency relationship, and on the fact that the applicant provides services on its own account. For bundled services, it applied the composite supply test in Section 2(30) CGST and found market research to be the principal supply, relying on the GoDaddy AAR decision. Classification was made under the rate notification 11/2017-Central Tax (Rate) dated 28.06.2017 as amended. The export question was decided under Section 2(6) IGST, read with the location and place-of-supply rules in Sections 2(14), 2(15) and 13 IGST.

P Provisions Relied On

- 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 2(14) and 2(15) IGST Act, 2017 (location of recipient and supplier)
- Section 13 IGST Act, 2017 (place of supply)
- Section 8 CGST and IGST Act, 2017 (Explanation 1, distinct persons)
- Section 20 IGST Act, 2017 read with Section 8 CGST Act
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended (Annexure, service codes 99837, 99859)
- CBEC Education Guide, 2012 (intermediary and composite supply guidance)
- GoDaddy India Web Services Pvt Ltd, AAR [2016 (46) STR 806]

! For the Practitioner

The order helps applicants in the Asahi Kasei group's position who provide market research and back-office support to overseas group companies on their own account, as it confirms they are not intermediaries and that their services can be export services. It does not decide the tax treatment of the non-classified services listed in the agreements (such as the feedback, interpretation, and regulatory monitoring items), and the authority declined to rule on some items for lack of clear facts. Because the order has a service-code discrepancy between its reasoning and its answer, the exact code should be verified against the full order before reliance.

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 -> maha-gst-ara-35-b-108 dt. 05.09.18 akipl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com