Behr-Hella Thermocontrol India Pvt. Ltd.

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 12/2018-19/B- 116, Mumbai, dt. 15.09.2018 Dated **15.09.2018**

Q Questions Before the Authority

- Whether, in the facts and circumstances of the case, the Applicant is liable to pay Integrated Goods and Services Tax on the testing services provided to its overseas group entities, being a zero-rated supply?

F Facts

The Applicant is a wholly owned Indian subsidiary of Behr-Hella Thermocontrol GmbH, Germany, and has service agreements with its overseas group entities (including BHTC USA and BHTC Shanghai) to test prototype air-conditioning control panels and accessories. The overseas entities physically send the prototypes to the Applicant in India, the Applicant conducts the tests in India, and it emails the test report abroad, usually without returning the prototypes. The Applicant is paid in convertible foreign exchange and claims the service is an export zero-rated under IGST.

H Ruling

Whether the Applicant is liable to pay IGST on testing services supplied to overseas group entities, or whether they are zero-rated exports	**Liable to IGST; not zero-rated supply**	Place of supply is India under section 13(3)(a) IGST Act, so the export condition in section 2(6)(iii) fails. The order also records that the Applicant may export under LUT/bond or pay IGST and claim refund.

The Authority held that the testing services provided by the Applicant are **liable to IGST and cannot be treated as zero-rated supply** . Although the Applicant satisfied the conditions of section 2(6) other than place of supply, the place of supply was held to be India under section 13(3)(a) because the prototypes were physically made available to the Applicant by the recipient.

R Reasoning

The Authority accepted that the supplier is in India, the recipient is outside India, consideration is received in convertible foreign exchange, and the parties are distinct persons, so section 2(6) is satisfied in those respects. It held that the place of supply is the decisive question, and that section 13(2) (location of recipient) yields to section 13(3)(a), because the overseas recipients physically made the prototypes available to the Applicant for testing in India. It distinguished the SGS India and Sai Life Sciences rulings relied on by the Applicant, on the ground that in those cases the goods were not physically made available by the overseas client. The Authority also held that completion of the service on delivery of the test report does not displace the place of performance in India.

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

P Provisions Relied On

- Section 2(6) IGST Act (export of services)
- Section 7(5) IGST Act (inter-State supply)
- Section 13(2) IGST Act (place of supply is location of recipient)
- Section 13(3)(a) IGST Act (services in respect of goods physically made available by recipient)
- Section 13(4) to 13(13) IGST Act (considered and held inapplicable)
- Section 16 IGST Act (zero-rated supply)
- Section 8, Explanation 1 IGST Act (distinct persons)
- Section 98 CGST Act and MGST Act (power to pass advance ruling)

! For the Practitioner

This ruling is useful for any Indian group company that tests prototypes sent in physically by overseas affiliates, because it treats those services as supplied in India and taxable under IGST. It signals that the section 13(3)(a) exception will override the general recipient-location rule where goods are physically made available. It does not decide cases where no physical goods are sent, and it does not address section 13(3)(b). As an advance ruling it binds only the Applicant, and an appeal lay to the Maharashtra Appellate Authority.

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-12-b-116_dt._15.09.18_bhtipl.pdf

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