M/s Infinera India Pvt. Ltd. (called 'Infinera India Private Limited' in paragraph 1 of the order)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 31/2019, Date: 12-09-2019 Dated **12.09.2019**

Q Questions Before the Authority

- Whether the activities carried out in India by the applicant would render the applicant an 'intermediary' as defined under Section 2(13) of the IGST Act, 2017, and consequently be subject to the levy of GST.

F Facts

The applicant is a 100% EOU under the STPI scheme and a wholly owned subsidiary of Infinera Corporation, USA. Under a Pre-sale and Marketing Services Agreement dated April 1, 2011, it conducts market research in India, follows up on customer leads supplied by the parent, makes sales presentations, and educates prospective customers about optical networking equipment. It is paid on a cost-plus basis irrespective of whether a sales order results, and the parent alone sets prices and commercial terms and supplies the goods directly to Indian customers.

H Ruling

Whether the applicant's India-based pre-sale and marketing activities under the Pre-sale and Marketing Services Agreement make it an intermediary under Section 2(13) IGST Act, 2017, and subject to GST	**Yes. The applicant qualifies as an intermediary and is subject to the levy of GST.**	Limited to the activities mentioned in the Pre-sale and Marketing Services Agreement. The order states no rate or HSN code.

The authority held that the applicant qualifies as an **intermediary** under Section 2(13) of the IGST Act, 2017, and is therefore subject to GST on the pre-sales marketing activities carried out in India under the Agreement. The ruling is confined to the activities listed in the Agreement and does not address the applicant's software development services.

R Reasoning

The authority rejected the argument that an intermediary must have the characteristics of a broker or commission agent, holding that the words 'any other person, by whatever name called' widen the definition. It read 'arranges or facilitates' broadly, following dictionary meanings that extend to marketing, locating buyers and procuring sales orders. It found the applicant acted as a conduit and go-between that created visibility for the foreign principal and enabled sales into the taxable territory. The GoDaddy India AAR decision relied on by the applicant was distinguished because that entity's role was purely advisory and it had no direct interface with customers, whereas the applicant had direct contact with Indian customers. The authority also noted the applicant's own admission that it does not make the main supply of goods.

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

P Provisions Relied On

- Section 2(13) of the IGST Act, 2017 (definition of intermediary)
- Section 2(5) of the CGST Act, 2017 (definition of agent), as argued by the applicant
- Section 13 and Section 13(8)(b) of the IGST Act, 2017 (place of supply), as argued by the applicant and not decided
- Section 97 and Section 98(4) of the CGST Act, 2017 and the KGST Act, 2017
- Rule 104 of the CGST Rules, 2017 and KGST Rules, 2017
- GoDaddy India Web Services decision of AAR New Delhi dated 04.03.2016 (distinguished; decided under erstwhile service ta…

! For the Practitioner

This ruling is useful for practitioners advising Indian subsidiaries that market overseas principals' products locally under cost-plus arrangements, because it shows the authority will read 'intermediary' broadly and will not require broker or agent characteristics. It settles the classification question for the applicant's pre-sales activities only. It does not decide the place of supply, the valuation, the applicable rate, or whether any export or zero-rating treatment applies to the service. Those points should be checked in the full order.

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_aar_31_2019_infineraindiapvtltd.pdf

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