M/s DKV Enterprises Private Limited

Authority for Advance Ruling — Andhra Pradesh

AAR No.04/AP/GST/2020 dated:24.02.2020 Dated **24.02.2020**

Q Questions Before the Authority

- Whether the marketing and consultancy services supplied by the applicant are liable under export of service or not.

F Facts

The applicant is a non-exclusive consultant for Grace Davison (Grace Products (Singapore) Pte Ltd) for the sale of fluid cracking catalysts and additives to the HPCL Visakh, CPCL Chennai and IOCL Barauni refineries. It promotes sales and solicits orders, but has no power to bind Grace, and earns a commission on net sales of Grace's FOB price in US dollars, paid by bank transfer. The applicant says its billing is made directly to the foreign principal, that it provides no service to any Indian client, and that it therefore falls within export of services.

H Ruling

Whether the marketing and consultancy services supplied by the applicant are export of services	**Not export of services. They are intermediary services and attract IGST.**	The order treats the place of supply as the location of the supplier under section 13(8) of the IGST Act, and applies the inter-State supply provision in section 7(5)(c) of the IGST Act because the recipient is outside India. The order states that the third export condition (place of supply outside India) is not met on the facts submitted.

The authority held that the services are not 'export of service' but 'intermediary services', because the place of supply of the applicant's services is outside India only in the sense that the recipient is outside India, and the applicant performs its functions in India. The services attract IGST. The authority also held that the applicant, by facilitating the supply of goods without dealing on its own account, falls within the definition of intermediary.

R Reasoning

The authority examined the definition of 'export of services' in section 2(6) of the IGST Act. It accepted that the supplier is located in India and the recipient is outside India, and that payment is received in convertible foreign exchange. It held, however, that the place-of-supply condition is not satisfied because the applicant renders its services in India as its principal requires. It then classified the activity as intermediary services under section 2(13) of the IGST Act, since the applicant facilitates the supply of goods without supplying them on its own account. Under section 13(8)(b) of the IGST Act, the place of supply of intermediary services is the location of the supplier, and the supply was treated as inter-State under section 7(5)(c), leading to IGST. The reasoning on the place of supply is brief, and the scan is partly degraded, so the order should be read in full before relying on it.

P Provisions Relied On

- Section 97(2)(b) and (e) of CGST/APGST Act, 2017 (clauses under which the questions were raised)
- Section 98 of CGST/APGST Act, 2017 (advance ruling; sub-section (4) cited)
- Section 2(6) of IGST Act, 2017 (definition of export of services)
- Section 2(13) of IGST Act, 2017 (definition of intermediary)
- Section 13(8) of IGST Act, 2017 (place of supply of intermediary services)
- Section 7(5)(c) of IGST Act, 2017 (inter-State supply)
- Section 98(1) of CGST/APGST Act, 2017 (forwarding to jurisdictional officers)
- Section 99 and Section 100 of APGST Act, 2017 (appellate authority and appeal period)

! For the Practitioner

This ruling is useful for consultants and commission agents who serve foreign principals and argue that their services are zero-rated exports. It shows that the authority will test the place-of-supply condition against where the services are actually performed, and that an agent facilitating a supply can be classed as an intermediary and charged IGST. The order does not decide the commission arrangement's value, the correct treatment of other agency models, or whether a different factual arrangement would qualify for export treatment. Practitioners should check the full order and the appeal route before relying on it.

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 -> aar_no.4-2020_dkv_enterprises_private_limited.pdf

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