M/s Fom Aluminium Machines Pvt. Ltd., 3rd Phase, Peenya Industrial Area, Bangalore - 560 058 (GSTIN 29AABCF2601E1Z5)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 09/2020, Date: 12-03-2020 Dated **12.03.2020**

Q Questions Before the Authority

- Is our export of services attract IGST under RCM?
- Is our services considered as Intermediary Services?
- Is IGST paid under RCM eligible to ITC?
- Provision in GST Returns to show the transactions?
- We are not collecting IGST from our customer and it is absorbed as cost-impact on the transaction value?

F Facts

The applicant is a subsidiary of Fom Industrie s.r.l., Italy, a manufacturer of aluminium working machinery. It imports small and medium machines in its own name, stocks them and sells them in India, and also books orders for larger CNC machines that the Italian parent supplies directly to Indian customers, earning sales commission under an agency agreement dated 01.01.2012. It also holds an agency agreement dated 01.09.2018 with Universal Pack s.r.l., Italy, under which it receives a lump-sum of 48,000 euros per annum plus a 5% commission on the first five machines sold.

H Ruling

Q1: Whether export of services attracts IGST under RCM	****Does not attract IGST under RCM****	The applicant is the supplier of the services, so the question of levy under RCM does not arise. The ruling is framed as applying 'if any' export of services.
Q2: Whether the applicant's services are intermediary services	****Yes, intermediary services, taxable under forward charge****	The applicant acts as agent for the parent company and for Universal Pack s.r.l., so the supply falls within intermediary services and is taxable in the taxable territory.
Q3: Whether IGST paid under RCM is eligible for ITC	****No RCM payment arises; ITC question does not arise****	The ruling states that payment of IGST under RCM does not arise because the applicant is a supplier, not the recipient of import of services. The order's discussion at para 6.7 notes that ITC is available to the importer of services, but the applicant does not import services.
Q4: Provision in GST returns to show the transactions	**No ruling given**	Not covered under Section 97(2) of the CGST Act 2017, so outside the authority's jurisdiction.

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

Q5: Non-collection of IGST from customers and absorption as cost impact	**No ruling given**	The authority held this is not a question at all but a statement of fact, and it is not covered under Section 97(2) of the CGST Act 2017.

The authority held that export of services by the applicant does not attract IGST under RCM, because the applicant is the supplier and not the recipient. It held that the services the applicant provides as agent are intermediary services, taxable under forward charge in its hands. It held that IGST under RCM does not arise because the applicant is not the recipient of any import of services, and it declined to rule on the fourth and fifth questions.

R Reasoning

The authority treated the applicant's commission and agency income as intermediary services, applying the definition of intermediary in Section 2(13) of the IGST Act 2017, which covers a broker, agent or other person who arranges or facilitates supply between two or more persons without supplying on its own account. It relied on the agency agreements to find that the applicant acts as agent for the parent company and for Universal Pack s.r.l. It applied Section 13(8)(b) of the IGST Act to hold that the place of supply is the location of the supplier of services. On imports, it relied on Sections 7(2) and 7(4) of the IGST Act and the Customs Act 1962 to explain that IGST on import of goods is levied under the Customs Act, and that RCM applies only to the importer of services. Questions 4 and 5 were rejected as outside Section 97(2) of the CGST Act.

P Provisions Relied On

- Section 97 and Section 97(2) of the CGST Act 2017
- Section 98(4) of the CGST Act 2017 and Section 98(4) of the KGST Act 2017
- Rule 104 of the CGST Rules 2017 and KGST Rules 2017
- Section 2(13) of the IGST Act 2017
- Section 13(8)(b) of the IGST Act 2017
- Section 7(2) and Section 7(4) of the IGST Act 2017
- The Customs Act 1962

! For the Practitioner

This ruling is useful for Indian entities that act as commission agents or marketing agents for foreign principals, as it treats such agency income as intermediary services taxed under forward charge in the agent's hands. A practitioner would rely on it for the position that an Indian agent supplying services is the supplier and not the recipient under RCM. It does not decide the ITC treatment of IGST paid under RCM on imports made by the applicant in its own name, the GST return reporting question, or the treatment of IGST absorbed into the transaction value.

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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_09_2020_12.03.2020_fampl.pdf

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