Mayank Jain

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-103/2018-19/B-63, Mumbai, dated 01/06/2019 (Application… Dated **01.06.2019**

Q Questions Before the Authority

- Whether the Marketing services to be supplied by the Applicant under the Foreign Immigration Advisor Agreement to the Consultant Manager constitute a supply of 'Support services' under SAC 9985 or 'Intermediary service' classifiable under SAC 9961/9962 or any other heading?
- Whether the Handholding services to be supplied by the Applicant under the Foreign Immigration Advisor Agreement constitute a supply of 'Support services' under SAC 9985 or 'Intermediary service' classifiable under SAC 9961/9962 or any other heading?
- Whether the Marketing services to be provided by the Applicant will be an export of services as defined under Section 2(6) of the IGST Act, 2017?
- Whether the Handholding services to be provided by the Applicant will be an export of services as defined under Section 2(6) of the IGST Act, 2017?

F Facts

The Applicant, an individual in Maharashtra, proposed to market the US EB-5 investor programme in India on behalf of a US-based Consultant Manager acting for a Regional Centre or Company. Under a Foreign Immigration Advisor Agreement he would market the programme to prospective Indian investors, arrange meetings, and, once an investor confirmed an investment, help with forms, documents and remittance. His consideration was contingent on successful investment or repatriation and was to be paid in US dollars.

H Ruling

Q1: Marketing services – support services (SAC 9985) or intermediary service (SAC 9961/9962)?	**Supply of 'Intermediary services' classified under SAC 9985, as printed in the answer**	The answer cites SAC 9985, which is the support-services code. The reasoning treats the supply as intermediary and the order's own table reproduces 9961/9962 for intermediary services, so the SAC reference looks inconsistent and should be checked against the full order.
Q2: Handholding services – support services or intermediary service?	**Supply of 'intermediary services'**	No SAC code is stated in the answer. The Authority relied on the agent or representative character of the Applicant's role in assisting investors.
Q3: Marketing services – export of services under Section 2(6) IGST?	**Answered in the negative**	The place of supply is India under Section 13(8)(b), as the location of the intermediary supplier, so condition (iii) of Section 2(6) is not met.
Q4: Handholding services – export of services under Section 2(6) IGST?	**Answered in the negative**	Same reasoning as Q3. Earlier in the observations the Authority had said the place-of-supply questions were outside Section 97, but it then answered them on the merits.

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

The Authority held that the Applicant is an intermediary under Section 2(13) of the IGST Act, so both the marketing and handholding services are intermediary services rather than support services. It further held that neither set of services is an export of services under Section 2(6), because the place of supply is India. Both export questions were answered in the negative.

R Reasoning

The Authority read the agreement as making the Applicant the link between the US Consultant Manager and Indian investors, arranging meetings and completing the investor's formalities. It applied the three limbs of the Section 2(13) IGST definition of 'intermediary' and treated the Applicant as an 'any other person' who facilitates a supply between two persons. It rejected the argument that the services were independent marketing or support services, and it distinguished the Applicant's authorities (Asahi Kasei and GoDaddy) on the ground that the Applicant acts on the Consultant Manager's behalf. Because the supply is an intermediary service, the place of supply is the location of the supplier under Section 13(8)(b) of the IGST Act, which is India, so the Section 2(6)(iii) condition for export is not satisfied.

P Provisions Relied On

- Section 97 and Section 98 of the CGST Act, 2017 and the MGST Act, 2017
- Section 2(6) of the IGST Act, 2017 (export of services)
- Section 2(13) of the IGST Act, 2017 (intermediary)
- Section 13(2) of the IGST Act, 2017 (general place of supply)
- Section 13(8)(b) of the IGST Act, 2017 (place of supply of intermediary services)
- Service Accounting Code entries 9961, 9962 and 9985

! For the Practitioner

This order is a useful warning for Indian individuals or firms who market foreign investment or immigration programmes and assist investors for a fee paid by the foreign promoter. Calling the work 'marketing' or 'handholding' does not avoid the intermediary characterisation, and the export route is closed where the supply is intermediary and the place of supply is India. The order is an Authority ruling binding only on the Applicant and is appealable before the Appellate Authority. It does not decide how the classification would apply to a purely principal-to-principal marketing arrangement, and the SAC code in Q1 needs checking against 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 -> maharashtra_aar_103_2018-19_mayank_jain_01.06.19.pdf

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