M/s McAfee Software (India) Pvt. Ltd.

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 56/2019, dated 19th September 2019 Dated **19.09.2019**

Q Questions Before the Authority

- Whether the marketing service provided by the applicant is taxable under the GST provisions and, if so, what is the SAC and the applicable rate of tax?
- Whether the services provided by the applicant to McAfee Singapore qualify as export of services under the IGST Act, given that the applicant is located in India, the overseas entity is in Singapore, the place of supply is outside India, the consideration is received in foreign currency, and the two entities are separate legal persons.
- Whether the services are 'intermediary' services.

F Facts

The applicant is an Indian private limited company and a subsidiary of McAfee (Singapore) Pte Ltd, which sells security software. Under a Marketing Services Agreement, the applicant provides marketing support to McAfee Singapore, including identifying prospective customers, liaising with customers through technical communication, advising on local compliance, holding demonstration inventory as custodian, and reporting market developments. The applicant is paid on a cost-plus basis (costs plus a ten percent mark-up) in US dollars, and its employees cannot conclude contracts for the overseas entity.

H Ruling

Taxability, SAC and rate of the marketing support services	**Covered under SAC 998599. CGST 9% under entry 23(ii) of Notification No. 11/2017 Central Tax (Rate). KGST 9% under entry 23(ii) of Notification (11/2017) No. FD 48 CSL 2017. IGST 18% under entry 23(ii) of Notification No. 08/2017 Integrated Tax (Rate).**	**Applies if the services are not treated as export of services.**
Whether the services qualify as export of services under the IGST Act	**No ruling given.**	The question involves determination of place of supply, which the authority held is outside its jurisdiction.
Whether the services are intermediary services	****Yes. The services are supplied as an intermediary.****	The authority held that a person in a principal-to-principal relationship can still be an intermediary under section 2(13) of the IGST Act.

The authority ruled that the services are covered under SAC 998599 and taxable at 9% CGST and 9% KGST, or

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18% IGST, under entry 23(ii) of the respective rate notifications, unless they are treated as export. It declined to rule on whether the supply is export because the place of supply question is outside its jurisdiction. It held that the services are supplied as an intermediary, rejecting the principal-to-principal argument.

R Reasoning

The authority read section 2(13) of the IGST Act to cover any person, by whatever name called, who arranges or facilitates the supply of goods or services between two or more persons. It held that the words 'any other person' exclude the ejusdem generis reading the applicant relied on, and that the own-account exclusion does not apply because the applicant does not make the main supply. It relied on the agreement's express purpose to 'support and facilitate the selling, marketing and distribution' of McAfee's products, which it found fits the statutory definition. It also held that the cost-plus method of consideration does not take the activity outside the definition, and it distinguished the service-tax-era rulings the applicant cited. Finally, it placed the services under SAC 998599, which covers business services of intermediaries.

P Provisions Relied On

- 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
- Section 2(13) of the IGST Act, 2017 (definition of intermediary)
- Section 2(6) of the IGST Act, 2017 (export of services), as argued by the applicant and not decided
- Section 16 of the IGST Act, 2017 (zero-rating), as argued by the applicant and not decided
- Entry 23(ii) of Notification No. 11/2017 Central Tax (Rate) dated 28-06-2017
- Entry 23(ii) of Notification (11/2017) No. FD 48 CSL 2017 dated 28-06-2017 (Karnataka)
- Entry 23(ii) of Notification No. 08/2017 Integrated Tax (Rate) dated 28-06-2017
- SAC 998599 and the CBIC explanatory notes to the classification scheme
- CBEC Education Guide dated 20 June 2012 (service tax era), quoted by the applicant

! For the Practitioner

A practitioner advising a group company that provides marketing support to a foreign affiliate on a cost-plus basis can use this ruling to see how the authority treats the intermediary definition. It holds that a principal-to-principal structure does not by itself exclude a service provider from the definition. The ruling does not decide whether such services are zero-rated exports, since the authority declined that question. It also rests on the authority's reading of the agreement and facts as presented, and the applicant had not disclosed the group shareholding pattern.

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_56_2019_19.09.2019_msipl.pdf

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