Merck Life Science Private Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 62/2018-19/B- 133 Mumbai, dt. 30.10.2018 Dated **30.10.2018**

Q Questions Before the Authority

- Whether the applicant's direction to the seller (in the agreement dated 21 June 2018) for direct transfer of BP business to MSPL and PM business to MPMPL would qualify as a 'supply between the applicant' and 'MSPL/MPMPL'?
- If the answer to the above is affirmative, then, as the parties are related, even in the absence of actual consideration, does the applicant have to attribute a notional consideration and charge GST in line with Schedule I of the GST Act to be compliant?
- If the answer to both questions is affirmative, and the recipients (MSPL/MPMPL) are eligible for full input tax credit, would the notional consideration (percentage of the business transfer value) be only academic, and will the invoice value be considered as open market value?

F Facts

The applicant entered into a business transfer agreement dated 21 June 2018 with Merck Limited (the seller) for transfer of the BPL business (BP, PM and LS businesses) on a slump sale, going-concern basis. Under a second agreement of the same date, the BP business was to be transferred directly to Merck Specialties Private Limited (MSPL) and the PM business directly to Merck Performance Materials Private Limited (MPMPL), at the applicant's direction. The applicant itself acquires only the LS business, and the application states that the BTA consideration is INR 10,520,000,000.

H Ruling

Q1: Whether the applicant's direction to the seller for direct transfer of BP business to MSPL and PM business to MPMPL is a 'supply' between the applicant and MSPL/MPMPL	**Yes (affirmative)**	Answered as per details discussed in the body of the order. The order treats the direction as a service falling within para 5(e) of Schedule II.
Q2: Whether, as the parties are related, the applicant must attribute a notional consideration and charge GST under Schedule I even without actual consideration	**Value to be determined as per Rule 28 of the CGST Rules, 2017**	The order does not fix a notional figure or percentage. Rule 28 is the valuation rule to be applied.
Q3: Whether the invoice value would be treated as open market value, making the notional consideration academic, where recipients can take full input tax credit	**Not answered**	The authority declined to answer, since the answer to Question 2 (Rule 28 valuation) made it unnecessary.

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

The authority answered Question 1 in the affirmative, holding that the applicant's direction to the seller is a supply between the applicant and MSPL/MPMPL. On Question 2, it held that the value is to be determined under Rule 28 of the CGST Rules, 2017. It did not answer Question 3 in view of its answer to Question 2.

R Reasoning

The authority examined whether the applicant's direction falls within the definition of supply in Section 7(1) of the CGST Act. It read the applicant's role in the two agreements, including the price, payment, termination and indemnity provisions, as showing that the applicant is the central party whose direction drives the transfer to its affiliates. It treated that direction as a service under para 5(e) of Schedule II, namely agreeing to the obligation to do an act. Because the parties are related and no consideration passes, the authority held that value must be determined under Rule 28 of the CGST Rules. The reasoning on the Schedule II characterisation is brief and does not engage in depth with the applicant's arguments that no economic benefit or course-of-business element exists.

P Provisions Relied On

- Section 7(1) of the CGST Act, 2017 (definition of supply, clauses (a) to (d))
- Schedule II, para 5(e) of the CGST Act, 2017 (agreeing to the obligation to refrain from an act, or to tolerate an act or situatio…
- Rule 28 of the CGST Rules, 2017 (valuation of supply between related persons)

! For the Practitioner

This ruling is a Maharashtra AAR decision that a parent or group company's direction to transfer a business to affiliates can be treated as a taxable service under Schedule II para 5(e), with value fixed under Rule 28. A practitioner advising on intra-group slump sales should note that the authority does not accept the applicant's view that such a direction is outside GST. The order does not fix a notional value, does not decide the input tax credit question (Question 3), and does not address whether the slump sale itself is a supply of goods or services. The order is appealable to the Maharashtra Appellate Authority for Advance Ruling, as noted in the 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 -> ara_order_62_2018_maharashtra_mlspl.pdf

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