NES GLOBAL SPECIALIST ENGINEERING SERVICES PRIVATE LIMITED

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 52/2018-19/B- 160, Mumbai, dt. 19.12.2018 Dated **19.12.2018**

Q Questions Before the Authority

- Whether the transaction in question is a Zero Rated Supply or a Normal Supply under the GST Act?
- If the said supply is a Zero Rated Supply, then can the same be considered as an export of service under the GST Act?

F Facts

The applicant, an Indian company in Mumbai that supplies man-power services to the oil and gas and power sectors, proposed to provide administrative and support services to NES Global Talent Recruitment Services, Abu Dhabi. The services include accounting, invoicing, bank and cash entries, payroll assistance and data storage, and are charged at the cost incurred plus a 10% margin plus applicable taxes. The two companies are sister subsidiaries of NES Global Limited, UK, and the applicant states that payment is received in convertible foreign exchange.

H Ruling

Whether the transaction under the MSA with NES Abu Dhabi is a zero rated supply or a normal supply	**Zero rated supply**	Held on the basis of the agreement dated 30 April 2017, which the authority accepted as the MSA at the final hearing. Earlier the authority had treated the MSA and the draft intercompany agreement as not produced or not authentic.
Whether the supply can be considered an export of service under the GST Act	**Yes, answered in the positive**	Follows from the answer to the first question. The applicant satisfies the conditions in section 2(6) IGST, and the place of supply is outside India.

The authority held that the transaction covered under the Master Services Agreement between the applicant and NES Abu Dhabi is a **zero rated supply** . It further held that the supply can be considered an **export of service** . Both answers rest on the view that the applicant satisfies the conditions of section 2(6) of the IGST Act and that the place of supply is Abu Dhabi.

R Reasoning

The authority examined each limb of the export of services definition in section 2(6) of the IGST Act. It found that the supplier is in India, the recipient is in Abu Dhabi, payment is received in convertible foreign exchange (supported by invoices, BRCs and bank statements), and the two companies are not establishments of a distinct person because their shareholding and management differ. It then applied section 13 and found that the services

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

are not covered by sub-sections (3) to (13), so under section 13(2) the place of supply is the location of the recipient, outside India. The authority also found that the applicant is not an intermediary, since the parties act as independent contractors. On that basis the supply falls within section 16(1)(a) as an export of services and is zero rated.

P Provisions Relied On

- Section 2(6) of the IGST Act (definition of export of services)
- Section 8, Explanation 1, of the IGST Act (distinct person)
- Section 13(1) and 13(2) of the IGST Act (place of supply of services)
- Section 13(3) to 13(13) of the IGST Act (exceptions, referred to as not applicable)
- Section 16(1)(a) of the IGST Act (zero rated supply: export of goods or services)

! For the Practitioner

The order helps Indian back-office service providers that serve overseas group companies, because it sets out how the section 2(6) conditions and section 13(2) apply to such arrangements. It is a ruling binding only on the applicant, and it rests on a documentary record the authority described as incomplete at earlier stages. It does not decide the GST treatment of the 10% margin, the adequacy of the agreement in other cases, or any input tax credit consequences.

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_52_2018_maharashtra_ngses.pdf

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