

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax (Member)
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax (Member)

GSTIN Number, if any/ User-id		271800000571ARR (User ID) 27AAACA4836H2ZR (GSTIN)
Legal Name of Applicant		Sabre Travel Network India Pvt Ltd
Registered Address/Address provided while obtaining user id		Urmi Estate, 14th Floor, 95, GanpatraoKadam Marg, Lower Parel West, Mumbai - 400 013
Details of application		GST-ARA, Application No. 08 Dated 13.04.2018
Concerned officer		Division -III Commissionerate Mumbai Central
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in brief)	It is a wholly owned subsidiary of Sabre Asia Pacific Pte. Ltd. (hereinafter referred to as 'Sabre APAC'), a leading provider of travel solutions and services across the globe.
Issue/s on which advance ruling required		(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Sabre Travel Network India Pvt Ltd, the applicant, seeking an advance ruling in respect of the following question.

"Whether the marketing, promotion and distribution services (hereinafter referred to as the "Said Services") provided by Sabre India to Sabre APAC would be subject to tax under the Central Goods & Services Tax Act 2017 and the Maharashtra Goods & Services Tax Act 2017 (hereinafter referred to as "Said Tax Acts") or would remain excluded under the said Acts as the said activities qualify as export of service in accordance to Section 2(6) of the Integrated Goods and Service Tax Act 2017 read with the said Tax Acts?"

At the outset, we would like to make it clear that the provisions of both the CGST Act and the GST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submission (Brief facts of the case), as reproduced verbatim, could be seen thus -
STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS ON WHICH ADVANCE RULING IS REQUIRED

BACKGROUND:

A. Sabre Travel Network (India) Pvt. Ltd. (hereinafter referred to as 'Applicant/Sabre India'), situated at 14th Floor, Urmi Estate, 95, Ganpatrao Kadam Marg, Mumbai - 400013, is a private limited company incorporated under the Companies Act, 1956. It is a wholly owned subsidiary of Sabre Asia Pacific Pte. Ltd. (hereinafter referred to as 'Sabre APAC'), a leading provider of travel solutions and services across the globe.

B. Sabre GBL Inc., an affiliate of Sabre APAC and Sabre India, has developed a global distribution system which uses a Computer Reservation System Software ('CRS Software') which it owns and operates. The said CRS Software performs various functions including airline seat reservations, scheduling, booking for a variety of air, car and hotel services, automated ticketing and fare displays, etc.

C. Sabre GBL Inc., had granted to Sabre Marketing Nederland B.V., a non-exclusive right to market and promote the CRS Software outside the United States, which it had subsequently sub-licensed to Sabre APAC - located in Abacus Plaza, 3 Tampines Central 1, #08-01, Singapore 529540 - for specified Asia Pacific jurisdictions. Sabre APAC has further been authorized to sub-license certain parts of its marketing rights and obligations to local-country distributors engaged in the marketing and promotion of CRS Software.

D. Accordingly, the Applicant has obtained a non-exclusive, royalty-free right and license from its parent company i.e., Sabre APAC, to distribute the CRS Software in India vide a Marketing Agreement dated 31 October 2016 with effect from 01 April 2016. Pursuant to the said Agreement, the Applicant has been appointed as the National Marketing Company to conduct marketing and promotion of access of the CRS Software to end subscriber's viz. travel agent in India. Hereto annexed and marked as "Exhibit A" is a copy of the Marketing Agreement dated 31 October 2016.

E. The scope of the services provided by the Applicant under the terms of the said Marketing Agreement are:

- i) Marketing services including advertising, identifying potential customers, identifying business opportunities, demonstrating offerings;
- ii) Consultancy and provision of information services;
- iii) Marketing support services, including PR, promotions, sponsorship, and special events and trade shows; and
- iv) Any other services necessary or advisable to perform its obligations under the said Marketing Agreement.

F. Marketing Agreement and its Operations:

In view of the above, the Applicant undertakes the following activities in relation to the marketing and promotion services provided by them under the Marketing Agreement dated 31 October 2016:

Accordingly, while marketing access to the CRS Software, the sales team of the Applicant approaches potential subscribers in India to whom they explain the features of the CRS Software and the flexibility of same to integrate with the potential subscriber's system for smooth functioning; Thereafter, in the event of a positive response, the Applicant scans the credentials and the business potential of the subscriber to whom it proposes to market the CRS Software. Based on organizational and workflow analysis of the subscriber and following a background check of their prior activities, the Applicant logs on a request into the system through the website maintained by Sabre APAC called Subscriber Communication Management System. This is an automated process wherein a request is placed by the Applicant to create a Pseudo City Code; Simultaneously, provided the subscriber agrees to use the CRS Software, order forms are collected from them to begin the process for activation of the CRS Software following the creation of the Pseudo City Code; If the subscriber meets all the criterion set forth by Sabre APAC for subscription, it is registered successfully and a Pseudo City Code is allotted in its favor. Once the Code is allotted and the setup is activated, the Applicant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems.

In this manner, once the organizational and workflow analysis is complete, the Applicant undertakes reporting of the results in the Subscriber Communication Management System owned by Sabre APAC. Consequently, the scouting of potential subscribers and the said organizational and workflow analysis of such potential subscribers are the deliverables by the Applicant which is submitted in the SCMS system in the form of a non-binding request.

Herein, the responsibility of the Applicant, stands completed on the identification of the potential subscribers to Sabre APAC. Subsequently, their responsibility of providing marketing support services (e.g. installation of interfaces to the CRS Software, consultancy, assistance, provision of information services, etc.) relating to the CRS System arises only once Sabre APAC decides to accept the potential customer based on the analysis provided by the Applicant.

Thus, based on the analysis of the subscriber's business provided by the Applicant, Sabre APAC makes a decision on whether or not to allot a Pseudo City Code to the potential subscriber and it is only following an affirmative decision that the Applicant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems. The decision to permit the subscriber's to have access to the CRS Software is based on the internal criterion set forth by Sabre APAC and the Applicant is not involved in the decision making process.

G. Marketing Support Services pursuant to the Marketing Agreement:

Additionally, the Applicant also undertakes sales promotion and marketing support activities to advance the business of Sabre APAC in India. This includes marketing support services such as PR, promotions, sponsorship, special events and trade shows, as well as any other services necessary to perform its obligations under the Marketing Agreement. Such services are provided with the aim to make the CRS Software the reservation system of choice for subscribers and to strengthen the subscribers trust in the brand 'Sabre' so as to augment Sabre APAC's business in India.

H. The entire gamut of services are provided in an integrated manner to Sabre APAC, and for consideration the Applicant raises a consolidated monthly invoice for the fees to be received from Sabre APAC for all the services rendered to them. The said fees, which is received in the form of convertible foreign exchange, is calculated on a cost



plus a mark-up basis as per the terms of the said Marketing Agreement. Further, the amount so received is in accordance to the domestic arm's length requirements under the local transfer pricing laws. Hereto annexed and marked as "Exhibit B" are sample copies of invoices issued to Sabre APAC.

1. Basis the above facts, the various roles and responsibilities of the Applicant and Sabre APAC Under the Marketing Agreement dated 31 October 2016 are distinguished below:

Sr. No	Functions	Duties of Sabre APAC	Duties of Applicant
1	Strategic Management functions	Planning, formulating and implementation of business goals and vision inter alia based on inputs from the Applicant	No participation of the Applicant.
2	Engaging distributors including partners and resellers	Directly enters into contract with national marketing companies to undertake various services including marketing of the CRS software, support services, PR promotion, etc.	The Applicant would provide information for purpose of identifying the potential customers to facilitate license of CRS Software within the territory of India and also provide marketing support once the subscribers are registered successfully. Further, the Applicant would also help Sabre APAC in disseminating details of CRS Software through promotions, sponsorships, etc.
3	Right to market CRS Software within the Asia Pacific region	Sabre APAC has been sublicensed the right to market and promote CRS software within the Asia Pacific region. It has also been sub-licensed its marketing Subscriber agreements are rights to local-country entered into by the Applicant distributor.	The Applicant has been granted the non-exclusive right to market and promote CRS Software within the territory of India. Pursuant the same, the Applicant identifies potential customers, demonstrates offerings, etc. In context with the scope and explanation of Para 2.3 and 2.4 of the said agreement, it is evident that the applicant has the right to negotiate and execute agreements with Subscribers. Subscribers agreement entered into by the Applicant in its own name and on its own account. The clauses referred pertains to the incentives and other benefits that Sabre India may offer to the Subscribers viz. travel agents and others who may want to use the CRS. This is because the use of CRS is generally free and there is nothing of significance normally charged by Sabre India or Sabre APAC for registration of subscribers.
4	Responding to enquiries	Provide inputs as and when specifically sought by the Applicant	Attend to product and services related queries of the potential and existing subscribers as and when required.
5	Consultancy Services	Basis the business analysis undertaken by the Applicant, Sabre APAC makes a decision on whether or not to allot the Pseudo City Code	The Applicant is required to provide consultancy and provision of information services in relation to potential customers.
6	Acceptance or rejections Subscriber Application	Subscriber applications are accepted or rejected directly by Sabre APAC at its sole discretion	No participation of the of Applicant except as a communication channel where required by Sabre APAC.
7	Execution of contracts with customers	Access to the CRS Software, by the allotment of Pseudo CRS Software City Code, is permitted by Sabre APAC	The Applicant provides marketing support services in relation to which may include grievance redressal service, repairs and maintenance services, etc.
8	Promotional Activity	Involved, as may be required on case to case basis	Use of any and all advertising and promotion techniques, service and support, promotion materials, participation in trade shows, sponsorship services, etc.
9	Advising on marketing strategies and local market conditions	Formulation and adoption of strategies, based on inputs of the Applicant	Advise Sabre APAC on any changes in market, organization, any political, financial, legislative, industrial or other events in within the prescribed territory of India.
10	Provide information on market trends, competitors, and new products and services in the Territory	Decision making based on inputs received from the Applicant	Advise Sabre APAC on any changes in market, organization, any political, financial, legislative, industrial or other events in within the prescribed territory of India.



- J. Further, Article 11 of the Agreement provides that there is no partnership or agency activity performed by the applicant. The relevant Article is reproduced as below for ready reference:

ARTICLE 11

No Partnership/Agency Nothing in this agreement is intended to or shall operate to create a partnership or joint venture of any kind between Sabre APAC and Sabre India, or to authorize either Sabre APAC or Sabre India to act as an agent for the other, and neither Sabre APAC or Sabre India shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including, without limitation, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- K. Thus, the relationship of the Applicant and Sabre APAC established by the Agreement is on principal to principal basis and there is no relationship by way of an agent, broker or any other person by whatever name called and therefore, services provided by the Applicant to Sabre APAC are the main service provided by the applicant to Sabre APAC on applicant's own account.
- L. In light of the aforesaid facts, the Applicant seeks to determine the liability to pay tax on services rendered by the Applicant to Sabre APAC under the Marketing Agreement dated 31 October 2016 and to obtain a ruling with regard to the following questions of law as mentioned in Annexure II to this application and accordingly submits this application before the Hon'ble Authority for Advance Ruling.

Grounds for Application / Interpretation of law in respect of the questions on which advance ruling is sought

The Applicant makes the following factual and legal submissions in relation to the aforesaid questions:

The Applicant is a registered Goods and Service Tax (hereinafter referred to as 'GST') assessee holding registration certificate bearing no. 27 AAACA4836H2ZR and is engaged in the business of providing marketing, promotion and distribution services to Sabre APAC.

As per the definition of 'Advance Ruling' under Section 95(a) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act'), an Applicant already engaged in business activities can seek an advance ruling in respect of matters or questions specified in Section 97(2) of the CGST Act, in relation to the supply of goods either proposed to be undertaken or is already being undertaken by the Applicant. Thus, an advance ruling can also be sought on the activity of supply of marketing and promotion services being undertaken by the Applicant.

Further, the Applicant submits that the question for which an advance ruling is sought in the present case, is not pending before any Goods and Service tax Officer, the Appellate Tribunal or any Court. Further, to best of knowledge of the Applicant, the said question of law has not already been decided by the Appellate Tribunal or any court. As a result, the restriction as prescribed under Section 98(2) of the CGST Act with respect to issues already pending or decided under other provisions of the CGST Act would not apply in the present case.

Therefore, in accordance with the legal provisions under Chapter XVII of the CGST Act, 2017 the Applicant is of the view that the present Application to 'determine the liability to pay tax on services' as prescribed under Section 97(2)(e) of the CGST Act is maintainable before the Authority.

APPLICANT'S INTERPRETATION OF LAW AND FACTS

The principal question raised by the Applicant is whether the marketing, promotion and distribution services (hereinafter referred to as "Said activities") provided by the Applicant to Sabre APAC would be subject to tax under the Central Goods & Services Tax Act 2017 and the Maharashtra Goods & Services Tax Act 2017 (hereinafter referred to as "Said Tax Acts") or would remain excluded under the said tax Acts as the said activities qualify as export of service in accordance with Section 2(6) of the Integrated Goods & Services Tax Act 2017 read with the Said Tax Acts. In other words the question is as to whether the said activities provided to Sabre APAC qualifies as an export of service in accordance to Section 2(6) of the Integrated Goods and Service Tax Act 2017 (hereinafter referred to as 'IGST Act') read with Section 16 of the said Act so as to come under the definition of "zero rated supplies" which are eligible to qualify as export services and therefore remain excluded under the provision of the Said Tax Acts read with the IGST Act.

In furtherance of the facts explained above, the Applicant wishes to draw kind attention to SABRE the facts and the more specific question of law on which the applicant craves for an Advance ruling, viz.:

1. WHETHER THE SERVICES RENDERED BY SABRE INDIA TO SABRE APAC QUALIFY FOR EXCLUSION UNDER THE SAID ACTS AS AN EXPORT OF SERVICE:

1.1 In view of the statement of facts given above, the Applicant is of the view that the various services rendered by them to Sabre APAC would remain excluded from the Said Acts since the same would qualify as export of services as defined under Section 2(6) of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as 'IGST Act') read with the said Acts. In order to substantiate the said proposition it is necessary to explain the provisions prescribed under the GST law which are analyzed as follows:

1.2 It is submitted that under the GST Act, the eligibility to tax of any activity is dependent on two aspects, viz. whether it is taxable under the provisions of the GST Acts and secondly whether the same is eligible for any exclusion for purpose of taxation under the GST Acts. Accordingly, it is necessary to first identify the taxability of the services under GST Acts and further the parameters for any exclusion from tax as are applicable in the facts and circumstances of the present case.

1.3 Determination of taxability:

1.3.1 It is submitted that as opposed to the erstwhile indirect tax regime where the taxable event was identified on specific events such as manufacture, sale or provision of service; under the provisions of the GST Acts, all such events have been subsumed under the single umbrella of supply as prescribed under Section 7 of the CGST Act.

1.3.2 It is submitted that for a service to qualify as supply under Section 7 of the CGST Act, It is necessary for the provision of the same to occur in the normal course of business and within the taxable territory of India. The burden of tax is only on the final consumer. Further the scheme of the Acts is that no taxes should be exported outside the territory of India. The charge under the Acts is not on business but on the consumer, and being a destination based consumption tax the place of supply of goods or services plays a vital role in determining the eligibility to tax.

1.3.3 Based on the facts presented above, the objective and the intent of the parties under the Marketing Agreement dated 31 October 2016 is that the services are to be rendered by the Applicant from India to Sabre APAC situated in Singapore. This is an inter-state supply as defined under Sec 13 of the IGST Act, 2017 read with Sec 2(57) of the CGST Act, 2017. A reference would have to be made to the definition of 'export of services' under Section 2(6) of the Integrated Goods and Service Tax Act 2017 (hereinafter referred to as 'IGST Act').

1.4 Exclusion from Tax:

1.4.1 Further, in light of the above, the incidence of GST will follow the destination principle and the tax revenue will accrue to the state where the goods or services are consumed. For this reason only, specific provisions have been framed under the IGST Act for the determination of the place of consumption of goods and services. In this manner, for the supply of any services where the location of the supplier or the location of the recipient is located outside India, the place of supply would be determined as per SABB Section 13 of the IGST Act. The said provision reads as follows:

13. (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(emphasis supplied)

1.4.2 As a result, in cases where the location of the supplier is in India and that of the recipient is outside India, the place of supply of services shall be the location of the recipient of services.

1.5 Applicability of the exclusion from tax in the present case:

1.5.1 In view of the above, a taxable service provided by a person in India would be subject to tax only when in accordance with the aforesaid rules mentioned in para 1.4 above has been consumed in India and not when it has been consumed outside the territorial boundaries of India. Consequently, where the services are provided from India and consumed outside India, they said activities would be excluded from taxation if they satisfy the test as export of services as per Section 2(6) of the IGST Act. The said provision defines export of services as under:

Export of services means the supply of any service when,

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8".

Herein, the term 'establishment of distinct persons' has been explained in explanation 1 under Section 8 of the IGST Act which reads as follows:

Explanation 1.--For the purposes of this Act, where a person has,

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a state or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

1.5.2 Taking the above into consideration, it is relevant to examine the conditions for export of services as prescribed under Section 2(6) of the IGST Act in the present case:

i) The supplier of service is located in India: The Applicant is a service provider located in India and all its distinct branches are located within the territory of India as well. Further, the Applicant has obtained GST registration for each of the distinct locations as per the provisions of the CGST Act.

ii) The recipient of service is located outside India: As per the Marketing Agreement dated 31 October 2016, the Applicant has a contractual obligation to provide services to Sabre APAC located at Abacus Plaza, 3 Tampines Central 1, Abacus + SABRE Plaza, #08-01, Singapore 529540. Thus, the recipient of services is located outside India. The expression "location outside India" for a service receiver has been defined in Sec 2(70) of CGST Act, 2017 and reads as follows.

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and (d) in absence of such places, the location of the usual place of residence of the recipient;

In the facts of the case, the Certificate of Registration for Sabre APAC is at its registered office in Abacus Plaza, 3 Tampines Central 1, Abacus Plaza, #08-01, Singapore 529540 and is evidenced by the same copy of which is attached as Exhibit-c.

iii) The place of supply of services is outside India: the services are provided by the Applicant to Sabre APAC. As per Section 13(2) of the IGST Act, the place of supply of services shall be the location of the recipient of services. Sabre APAC is located in Singapore. Consequently, as the recipient is located in Singapore, the services shall be considered to be



supplied in Singapore. Thus, the place of supply of services is outside India. A copy of the GST registration certificate issued to the Applicants is attached as Exhibit-D and this would be the place of location of the supplier of service in accordance with Sec 2(71) of the CGST Act

iv) The payment for such services is received in convertible foreign exchange: the consideration for the services rendered to Sabre APAC is received in convertible foreign exchange. Sabre India charges a fee on a cost plus markup basis in US Dollars which the Applicant is entitled to irrespective of the number of booking made on the said CRS Software by the Subscribers viz. travel agent. The Foreign Inward Remittance Certificates ("FIRC") showing that the receipt of consideration is in convertible foreign exchange is annexed and marked as Exhibit-E.

v) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8 of the IGST Act: The Applicant is located in India and Sabre APAC is located outside India. Thus, the Applicant and Sabre APAC are distinct entities as per the terms of explanation 1 in Section 8 of the IGST Act. Moreover, they undertake operation in their own capacity on principal to principal basis and are not merely establishments of distinct persons.

1.5.3 It is submitted that the main service of the Applicant under the Marketing Agreement is solely to provide market access to the CRS Software and to build the Sabre System as defined in the said Agreement in India. The Applicant merely identifies potential clients and only on acceptance of the same by Sabre APAC does the Applicant provide any after-sale services as may be required under the Marketing Agreement. Moreover, considering the principal to principal nature of the said Agreement, the Applicant provides marketing, promotion and distribution services only to Sabre APAC and not to any other party. Thus, all the services provided by the Applicant accrues outside India to Sabre APAC. There is no remuneration, fee or any other consideration received by the Applicant from anyone in India including the Subscriber namely travel agents in connection with the marketing activities under the Agreement

1.5.4 Therefore, in view of the facts and the provisions of law as applicable in the present case, the Applicant has satisfied all the conditions under Section 2(6) of the IGST Act and therefore the activities would remain excluded from the applicability of the Said Acts since the Applicant is entitled to claim the benefit of zero-rated supplies as prescribed under Section 16 of the IGST Act.

2. SERVICES RENDERED BY THE APPLICANT CANNOT FALL UNDER INTERMEDIARY SERVICES AS PER THE TERMS OF SECTION 2(13) OF THE IGST ACT:

The services rendered by the Appellant are not in the nature of intermediary services.

2.1 At the outset the Applicant wishes to reiterate and emphasize that, the Applicant provides the services to Sabre APAC on principal to principal basis with the only intention of promoting and marketing of CRS Software in India.

2.2 In this regard it is also necessary to examine the scope of the expression 'intermediary' as defined under Section 2(13) of the IGST Act.

2.3 It is submitted that the Marketing Agreement between the Applicant and Sabre APAC do not intend to operate so as to create a partnership or a joint-venture between the Applicant and Sabre India. It is a contractual relationship between two distinct entities for the supply of services from India and the receipt of the same in Singapore. Furthermore, neither does any clause of the Marketing Agreement requires any facilitation or any similar arrangement with respect to the Subscribers in India viz travel agents by the Applicant, nor does the said Agreement create an obligation on the Applicant's part to facilitate or arrange the supply of goods or services by Sabre APAC to the Subscribers. Herein a reference can be made to Article 11 of the Marketing Agreement enclosed as Exhibit A.

2.4 The said Article 11 reads as follows:

"Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between Sabre APAC and Sabre India, or to authorize either Sabre APAC or Sabre India to act as agent for the other, and neither Sabre APAC or Sabre India shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including, without limitation, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power)."

2.5 To ascertain whether the services provided by the Applicant are covered under the definition of 'intermediary' or not, it is pertinent to analyze the term 'intermediary' in detail vis-à-vis activities performed by the Applicant as per the agreement entered into with Sabre APAC.

2.6 In terms of provisions of Section 2(13) of the IGST Act, 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account. As per the said definition, the person who arranges or facilitates transactions in securities will also be considered as an Intermediary.

2.7 The above definition of intermediary has following three parts:

- Such person should be a broker or an agent or similar person
- Such person should arrange or facilitate supply of goods or services or both or securities between two or more persons
- Should not be a person who supplies goods or services or both or securities on his own account

2.8 In this context, it is important to note of the expression 'means'. It is trite law that the use of the word 'means' in a definition governs the words following and has a restrictive meaning. Therefore, in the present case, an intermediary can mean only a broker, an agent or any other person, by whatever name called.

2.9 In view of the above definition, it would be pertinent to understand the meaning and scope of the words 'broker' and 'agent'. The words 'broker' and 'agent' have been defined in the Black's Law Dictionary as follows

Broker: "An agent employed to make bargains and contracts between other persons, in matters of trade, commerce, or navigation, for a compensation commonly called "brokerage."

Agent: "One who represents and acts for another under the contract or relation of agency, q. v. Classification. Agents are either general or special. A general agent is one employed in his capacity as a professional man or master of an art



or trade, or one to whom the principal confides his whole business or all transactions or functions of a designated class; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment."

2.10 The dictionary meanings extracted above, clearly indicate that, an element of 'representation' of 'acting on behalf of the other person' should be mainly present for a person to be considered as 'broker' or 'agent'. In other words, Agent or a Broker represent and act on behalf of another person i.e. the principal, and do not work at their own behest but as a representative of on behalf of their principal. Therefore, it can fairly be concluded that a principal - agency relationship between persons forms the core requirement of an agent or a broker.

2.11 Besides, the last phrase in the means clause of the definition of 'intermediary' contains the clause 'or any other person, by whatever name called'. The most appropriate rule of interpretation which is to be used while interpreting the phrase 'by whatever name called' is the principle of Ejusdem Generis. The application of this Rule is necessitated because of the use of a general phrase preceded by specific words. Ejusdem generis is a rule of interpretation that where a class of things is followed by general wording that is not itself expansive, the general wording is usually restricted things of the same type as the listed items.

2.12 Thus, applying the interpretative rule of Ejusdem Generis, the phrase 'by whatever name called' will include a person in the same genus as that of a broker or an agent. In other words, the phrase "by whatever name called", will mean a person who is also appointed in a representative capacity.

2.13 Further, the second element of the definition provides the nature of activities performed by the broker or agent which would be classified as intermediary services. As per the definition, 'only the activity of arranging or facilitating the supply of goods or services or both, or securities between two or more persons,' by a broker or an agent would be tantamount to intermediary services.

2.14 The said definition makes it clear that only a person being a broker or an agent or any person acting on behalf of the principal, arranging or facilitating the supply of goods or services or both between two or more persons would be construed to be an intermediary.

2.15 Moreover, the said definition also contains an exclusion in as much as any person (including a broker, agent or any other person) who provides the main supply on his own account will not qualify as an intermediary. In other words, if a person provides the supply on his own account, then such a supplier is not covered under the definition of term intermediary.

2.16 Accordingly, having regard to the analysis of definition of 'intermediary services' it can clearly be said the Applicant being a person who supplies the main services on its own account does not qualify as an intermediary. As the services are provided on a principal-to-principal basis to Sabre APAC, the Applicant would be covered under the exclusionary clause of the above definition.

2.17 It is submitted that the Marketing Agreement dated 31 October 2016 between the Sabre India and Sabre APAC makes it clear that Sabre APAC has been granted the authority to sub-license some of its rights to local distributors so as to promote and market the CRS Software. The said Agreement does not create an obligation on the part of the Applicant to facilitate or arrange the supply of goods or services by Sabre APAC to the Subscribers. It only creates an obligation on the part of the Applicant to provide marketing services to Sabre APAC with respect to the CRS Software belonging to Sabre Global Inc. within the territory of India.

2.18 Hence, it is pertinent to note that, an agent typically facilitates supply of goods or services between two or more persons; therefore, acts under a tripartite arrangement i.e. such arrangement ought to have at least three parties - seller, buyer and the agent. Whereas, no clause of the Marketing Agreement between the Applicant and Sabre APAC, mentions the rendering of facilitation or arrangement of services by the Applicant between Sabre APAC and the Subscriber. The Agreement does not facilitate nor does it enable the facilitation of any supply of services between Sabre APAC and the Subscriber. There is no privity of contract between the Applicant and the Subscriber namely travel agent in India where by the Applicant is under any obligation or duty owed to the Subscriber in terms of the arrangement with the Sabre APAC under the Marketing Agreement.

2.19 Hence, the Applicant does not qualify as an 'intermediary' as per Section 2(13) of IGST Act. Moreover, considering the principal to principal character of the agreement, the Applicant provides marketing, promotion and distribution services in relation to the CRS Software only to Sabre APAC and not to any other party.

2.20 Given that the definition of 'intermediary' under the IGST Act is largely in line with the definition of intermediary under the erstwhile Service Tax Legislation (Finance Act, 1994), the guiding principles provided under Education Guide released by Central Board of Excise and Customs under the erstwhile Service Tax legislation for determining whether a person acts as an intermediary can be referred in this context. The same are reproduced below for the purpose of discussion:

- Nature and Value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

- Separation of Value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as 'commission'.

- Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable. Further the said Educational Guide at para 5.9.6 has stated as follows: "Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client or the client's behalf, but actually provide these services on their own account, will not be categorised as intermediaries" (emphasis supplied)



2.21 It is imperative to analyze the nature of services rendered by the Applicant in light of the above guiding principles. Accordingly the same is discussed in the below paragraphs:

- Nature and value: Applicant is facilitating service between travel agents and Sabre APAC, this structure cannot render them s intermediary. The question of altering the nature of value of service can apply only when the applicant qualifies as an agent, etc., and not otherwise.
- Separation of Value: The consideration received by the Applicant is a service fee which is calculated on cost plus mark up method. It is submitted that the mere fact that the remuneration is by way of commission' cannot alter the status of the Applicant to that of an agent when the basic agreement with Sabre APAC clearly states that there is no right of representation under Article 11. Further whether there are any registrations from the Subscriber viz travel agents in India or not even in that case the minimum establishment cost of the Applicant with the mark up as provided in para 5.1 of the Marketing Agreement will have to be paid by SABRE APAC to Sabre India. It is settled law that the person who is entitled to the receipt of service and who has the obligation to pay for the said service alone is the service receiver and no other person even if such other person were to indirectly benefit from the provision of the main service.
- Identity and title: The third principle indicates that the service provided on behalf of the principal is clearly identifiable. The Applicant submits that as per Article 11 of the Agreement, the relationship between the parties is clearly restricts the performance of the activity in the nature of Agent. Therefore the Applicant submits that no services is provided by the Applicant on behalf of Sabre APAC. The activities performed by the Applicant directly to Sabre APAC is only on a principal to principal basis.

2.22 Accordingly, the services rendered by the Applicant do not satisfy any of the guiding principles laid down under the erstwhile Service Tax regime in relation to intermediary services.

2.23 In the light of the above detailed analysis and discussions, it is submitted that the services provided by the Applicant are only in the nature of marketing, promotion and distribution activities. As stated earlier with reference to Educational guide above the fact that the Applicants would interact with the Travel agents cannot take away the relationship with Sabre SABRE APAC from that of a principal to principal basis and bring them within the scope of Intermediary.

2.24 Further, there is no privity of contract between the Applicant and the customers of Sabre APAC and the customers or are in no way connected with the services supplied by the Applicant to Sabre APAC. Nor is Sabre India accountable in any way to the Subscribers for any deficiency in the service provided by the Sabre APAC directly to the Subscribers by way of on line data access and retrieval services. Hence, services supplied by the Applicant cannot be characterized as an intermediary services.

2.25 In summary, the services rendered by the Applicant in pursuance of the Marketing Agreement dated 31 October 2016, do not qualify as intermediary services for the following reasons:

Services provided by the Applicant only involve standalone activities such as market survey, advising Sabre APAC on marketing strategies, conducting promotional activities and responding to prospective queries that may arise out of the same

(i) In any case, the Applicant does not arrange or facilitate any supply of goods or services inter alia due to the following reasons:

- The Applicant cannot conclude the contracts on behalf of Sabre APAC or to make any commitment on the behalf of Sabre APAC as an agent or otherwise or to bind Sabre APAC in any respect.

- The Applicant does not have any authority to allow the creation of the Pseudo City Code in favour of the subscriber to grant access to the CRS Software.

The applicant's role is limited to undertaking marketing and promotional activities, undertake market research and informing of Sabre APAC of interest of potential customers immediately by raising a request for grant of a Pseudo City Code. It does not have any authority whatsoever to bind Sabre APAC with respect to issuance of the same. Sabre APAC may directly accept or reject such requests on its own discretion.

- The information / any services provided by the Applicant are not the sole basis upon which Sabre APAC would accept or reject the orders received from customers. They would depend upon various other business factors taken into consideration by Sabre APAC. The decision to allow or reject access solely rest with the Sabre APAC

- The Applicant plays no role in enabling Sabre APAC and the subscriber to enter into contract for access of CRS Software except feeding the information via the system to enable Sabre APAC register the admitted and only supports in providing product related information and engages in discussion as required by Sabre APAC.

- Consideration for the service rendered is based on costs incurred by the Applicant in supplying services plus a pre-agreed mark-up which is independent of actual value / volumes of services, if any, ultimately provided by Sabre APAC. This evidences that the Applicant receives fee for provision of services to Sabre APAC and not any commission as in case of agency relationship and hence, does not arrange or facilitate any supply of services to Sabre APAC.

2.26 In light of the above detailed analysis and discussions, it is submitted that, the services SABEN provided by the Applicant are limited to marketing, promotion, distribution activities and other support activities.

3. THE SERVICES RENDERED BY THE APPLICANT IS CLASSIFIABLE AS A COMPOSITE SUPPLY AS PER THE TERMS OF SECTION 230) OF THE CGST ACT:

3.1 It is submitted that under the Marketing Agreement dated 31 October 2016 with the Sabre APAC, the Applicant provides in an integrated manner, a bundle of services in relation to marketing and promotion of CRS Software within the territory of India which includes advertising, identification of potential business opportunities,



demonstrating offerings, consultancy, promotion, sponsorships and other related support services necessary to perform its obligations under the terms of the agreement.

3.2 All the services rendered by the Applicant are provided in conjunction with each other with the ultimate aim of providing better customer experience leading to the establishment of a trust with the Subscribers in India, which would collectively work towards augmenting the business of Sabre APAC in India. Herein, the supply of services like consultancy, promotion, sponsorships and other related support services rendered by the Applicant are supplementary to the main supply of marketing and promotion services provided to Sabre APAC.

3.3 Considering the nature of the services offered by the Applicant and its operation under the Marketing Agreement, these are a bundle of services supplied by the Applicant to Sabre APAC and is a composite supply⁴ as defined under Section 2(30) of the CGST Act. The said provision reads as follows:

⁴ composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply⁴

3.4 Thus, for a supply to be treated as a composite supply, it has to meet the following conditions:

- the supply should consist of two or more taxable supplies;
- they should be naturally bundled together;
- they should be sold in conjunction with each other; and
- One of the supplies should be the principal supply, i.e. the predominant portion of the supply to which the other supply is ancillary

3.5 It is submitted that in the present case, the services like consultancy, promotion, sponsorships and other related support services are of a supplementary nature which facilitate the provision of the marketing and promotion services rendered by the Applicant to Sabre APAC. Therefore, said service of marketing access to the CRS Software is of principal nature with the other services being supplementary to it, as the other marketing support services cannot be rendered in the absence of the marketing services provided by the Applicant under the Marketing Agreement.

3.6 Further, such services are not peculiar to the Applicant's case and similar services are provided by various Indian entities to their overseas customers as a single package. Besides, for the provision of the said services, the Applicant issues a single consolidated monthly invoices on a cost plus markup basis for the entire bundle of services, irrespective of the nature of actual supplies made during the said period. Consequently, the services of marketing, consultancy, promotion, sponsorships and other related support services provided under the Marketing Agreement are naturally bundled and supplied in conjunction with each and can be classified as a 'composite supply'.

SUMMARY OF INTERPRETATION OF LAW AND FACTS:

Under the provisions of the Section 2(6) of the IGST Act, to avail the benefit of export of taxable services, the services are to be delivered outside India and used outside India and payment for services exported should have been received by the service provider in convertible foreign exchange.

Admittedly, the services provided by the Applicant of identification of potential customers are non-binding in nature with Sabre APAC having the option to not follow the recommendations/evaluations made by the Applicant. The Applicant is not involved in the decision making process of the service recipients with regard to the provision of access of the CRS Software. Further, the marketing support services too are provided by the Applicant to Sabre APAC under the Marketing Agreement. Thus, no part of the Marketing Agreement facilitates or arranges the supply of services, but actually creates an obligation to provide the said services directly to Sabre APAC on a principal-to-principal basis. Additionally, although the overseas clients use the services provided by the Appellant for augmenting their business in India, it is immaterial how beneficial the services have been to them for the payment of remuneration. In other words, no consideration is received by the Applicant irrespective of the number of bookings made through the CRS Software. Accordingly, in view of the facts and legal provision the Applicant is of the view that as the services rendered by them to Sabre APAC, under the Marketing Agreement dated 31 October 2016, meets all the conditions prescribed under Section 2(6) of the IGST Act, it can be said that the said services are excluded from the Said Acts being in the nature of exports and qualify as zero-rated supplies under Section 16 of the IGST Act.

Finally, as all the services rendered under the said Marketing Agreement are naturally bundled and provided in conjunction with each other for which a single invoice is raised by the Applicant the service may be classifiable as a composite supply⁴ as defined under Section (30) of the CGST Act and thus all such supplementary activities would also be excluded from the Said Acts.

Without prejudice to above submission, the Applicant respectfully requests Your Honor to grant an opportunity of personal hearing in this matter in order to explain the matter more lucidly. The Applicant reserves their right to modify, rescind or alter any part of submissions and to place additional evidence in support of their contention at the time of personal hearing.

WRITTEN SUBMISSION AT THE PERSONAL HEARING ON 10 JULY 2018

Brief Background:

A. Applicant is private limited company engaged in the provision of marketing, promotion & distribution of the Computer Reservation System Software ("CRS Software") within the territory of India. The CRS Software has been developed by Sabre GBL Inc. as a global distribution system which performs various functions including airline seat reservations, scheduling, automated ticketing & fare displays, booking for a variety of air, car & hotel services, etc.

B. Sabre APAC, the Applicant's parent company situated in Singapore, has been sub-licensed the right to market and promote the said CRS Software for Asia specific jurisdictions. Further, it has been authorised to further sub-license certain parts of its marketing rights and obligations to local-country distributors. Accordingly, Sabre APAC has



appointed the Applicant as the National Marketing Company vide a Marketing Agreement dated 31 October 2016 pursuant to which the Applicant has been granted a non-exclusive right to market and distribute the CRS Software to various travel agents in India.

C. Under the said Marketing Agreement, the Applicant provides a range of services relating to marketing and sales promotion which includes advertising, consultancy, public relations, promotions, marketing support services, etc. These services are rendered by the Applicant to Sabre APAC for which consideration is payable by Sabre APAC in the form of convertible foreign exchange, calculated on a cost-plus markup basis. The cost-plus markup basis comprises of the monthly qualifying cost which is the sum of all costs incurred by the Applicant in the process of provision of service together with a profit margin of ten percent thereon and is the basis adopted for purpose of Transfer Pricing provision under the Income tax Act. Herein, transfer pricing study and documentation is one of the procedures to be followed under the Income Tax laws of India and it forms the basis for assessment of corporate taxes by the Income Tax department

D. However, the Marketing Agreement between the Applicant and Sabre APAC, does not establish any agency between the parties and all the services are rendered by the Applicant on a principal-to-principal basis. Further, the said Agreement does not operate to create any partnership or joint venture of any kind between the Applicant and Sabre APAC.

E. In light of the above, the Applicant has preferred an Application before this Authority for Advance Ruling seeking to determine whether there arises any liability to discharge Goods and Service Tax ("GST") on the services rendered to Sabre APAC situated outside India.

Submission:

In order to avoid repetition and in the interest of brevity, the Applicant would like to reiterate the facts and submissions made in the Application and without prejudice to the same, make the following submission which it requests be considered as part of the Application itself:

1. Submission with respect to the qualification of services rendered by the Applicant under Section 2(6) of the IGST Act

1.1. It is submitted that the Marketing Agreement dated 31 October 2016 creates an obligation on the Applicant to provide marketing, promotion and distribution services to Sabre APAC in relation to the CRS Software, within the territory of India. The Applicant identifies potential customers and once the said customer is accepted by Sabre APAC, it provides after-sales services as may be required. Further, all promotion and marketing support services provided by the Applicant is towards the objective of building the customer base of the CRS Software in India or in relation to the same. Hereto annexed and marked as 'Annexure 1' is a scope of the services rendered by the Applicant under the said Marketing Agreement dated 31 October, 2016.

1.2. With respect to the services supplied by the Applicant, a reference is made to para 1.5 of the Application which describes with the nature of the Agreement entered by the parties and the services rendered thereunder which constitutes export of services by the Applicant to Sabre APAC as per Section 2(6) of the Integrated Goods and Service Tax Act, 2017 (IGST Act).

1.3. Accordingly, GST being a destination based consumption tax, the liability to discharge tax shall not arise in cases where the consumption of the supply is outside the taxable territory of India. As a result, in the present case, the Applicant would be eligible to avail the benefit of zero-rated supplies as are available to exports under Section 16 of the IGST Act.

1.4. In this regard, reference is made to the Customs Excise Service Tax Appellate Tribunal's ('CESTAT') Chandigarh Bench order in the case of *M/s Evaluserve.com Pvt. Ltd. v. CST, Gurgaon reported in 2018 (3) TMI 1430 - CESTAT Chandigarh* wherein - as is the case with the Applicant - the Appellant, in the said order viz. *M/S Evaluserve.com* directly interacted with the potential customers of its client and basis their research provided a report of the customers requirement to its client, subsequent to which the client would provide its deliverables. Here, *M/s Evaluserve.com* plays a pivotal role in the building its client's customer base and subsequently its obligations would come to end once the said report is submitted. Thus, as in the present case, *M/s Evaluserve.com*'s client act basis the report provided wherein the actual supply is made by the client of *M/s Evaluserve.com*. It is pertinent to note that, although *M/S Evaluserve.com* interacts with the client's customers, the actual service recipient is the client and not the client's end customers. Based on these facts, on the question of whether the services rendered by *M/s Evaluserve.com* qualifies as 'intermediary services', the Hon'ble CESTAT at Chandigarh held as follows:

"13. In view of the above analysis, we find that there are various decisions relied upon by the appellant in support of their argument and also had had observed the same. Therefore, we hold that the appellant are not intermediaries in terms of Rule 2(f) of the Place of Provision of Service Rules, 2012. Therefore, the appellants are not liable to pay service tax being provider of service in India in terms of Rule 9 of the Place of Provision of Service Rules, 2012. Therefore, the demands against the appellants are not sustainable. Consequently, refund claim filed by the appellants are admissible."
(emphasis supplied)

1.5. Further, in the ruling of the Hon'ble Advance Ruling Authority (under the Finance Act, 1994) in the matter of *GoDaddy India Web Services Pvt. Ltd. reported in 2016 (46) STR 806 (AAR)*, *GoDaddy India* was to provide a bundle of services such as direct marketing and promotion services, supervision of quality of third party customer care centre services and payment processing services under the category of 'Business Support Services' to *GoDaddy.com LLC (GoDaddy US)* in lieu of a proposed Service Agreement. In the said ruling, it was held by the Hon'ble Authority for Advance Ruling that the *GoDaddy India* was providing services on their own account to *GoDaddy US* and not to the Indian customers of *GoDaddy US*. Hence, the place of provision of service would be outside India in terms of Rule 3 of the place of Provision of Services Rules, 2012 and these services would qualify as export under Rule 6A of the Service Tax Rules. The relevant extract of the said advance ruling reads as follows:



"14***

However, applicant is providing to GoDaddy US services viz.; direct marketing and promotion services, supervision of quality of third party customer care center services and payment processing services, as per draft Service Agreement between the applicant and GoDaddy US. There is no contract between the applicant and the customers of GoDaddy US based in India. GoDaddy US have used said services provided by the applicant as per the draft Service Agreement. Further, applicant would charge a fee equal to the operating costs incurred by the applicant plus a mark-up of 13% on such costs, which would be received by the applicant from GoDaddy US in US Dollars. The benefit of services provided by applicant accrues to GoDaddy US outside India. In view of above, judgments relied upon are of no avail to the Revenue, as services provided by the applicant are to be consumed in US and not in India. Further, the judgment in case of Microsoft Corporation (India) Pvt. Ltd. relied upon by the Revenue is an interim order regarding pre-deposit of the amount ordered by the Tribunal. Further, Hon'ble High Court observed that both sides have arguable case. In the case before us, Rule 3 *ibid* is applicable as the recipient of service is GoDaddy US, i.e., outside India.

15. In view of above, we rule as under; In the facts and circumstances of the case, the place of provision of business support service provided by the applicant, is outside India in terms of Rule 3 of the Place of Provision of Service Rules, 2012

17. In respect of Question 2 above, we held that the place of provision of service would be outside India. It is observed that in this case, provider of service, i.e., the applicant, is located in India, which is the taxable territory; recipient, i.e., GoDaddy US is located in USA, the service to be provided by the applicant, i.e., business support services is not specified under Section 66D, i.e., Negative List Services; applicant would receive payment for said services in convertible foreign exchange and applicant and GoDaddy US are not merely establishments of a distinct person in accordance with item of Explanation 3 of clause (44) of Section 65B of the Finance Act, 1994. As all the ingredients enlisted under Rule 6A *ibid* are satisfied, said service will qualify as export of taxable service. In view of above, we rule as under; In the facts and circumstances, the services to be provided by the applicant to GoDaddy US would fall to be classified under Rule 3 of the place of Provision of Service Rules, 2012 qualify as export of taxable services in terms of Rule 6A of the Service Tax Rules, 1994 (inserted vide Notification No. 36/2012-S.T., dated 20-6-2012) and therefore, remain non-taxable for purpose of payment of service tax under the Finance Act."

1.6. Similar view has been taken by the Hon'ble Advance Ruling Authority at New Delhi in the case of M/s Universal Services India Pvt. Ltd. v. CST, Delhi-IV reported in 2016 (42) STR 585 (AAR).

1.7. With respect to the above, it is submitted that the criterion for the determination of export of services under the erstwhile service tax provision was similar to the provisions under the IGST Act. In this context, it may be relevant to refer to the CESTAT order in the case of *Principal Commissioner of Central Excise -I v. Advinus Therapeutics Ltd reported in 2016-TIOL-3138-CESTAT-MUM* wherein the Hon'ble Tribunal on the question of whether a transaction which enjoyed the benefit of export of service for the period prior to 2012 (before the Negative List) would have a different treatment under the new Rules answered as follows:

"12. It is an admitted fact that the respondent had been rendering services that were, in the erstwhile pre-negative list regime, taxable but for the provider being a Export Oriented Unit under the entry in section 65(105)(za) of Finance Act, 1994. In the scheme of Place of Provision of Service Rules, 2005, the various taxable services had been categorized as object-based, performance-based and recipient-based for the purpose of exemption Section 93 of Finance Act, 1994. Though those Rules are no longer valid for the purposes of rule 5 of CENVAT Credit Rules, 1994, their guidance value cannot be discountenanced. The 'negative list' regime was not intended to be either detrimental or beneficial to existing assesses except where such intent was specifically sanctioned by legislation. The respondent, prior to 1st July 2012, was eligible for all benefits as the service rendered by them was treated as export with the recipient of the service being outside the country. The corresponding provision in Place of Provision of Service Rules, 2012 is rule 3 which brings the service within the ambit of export of service in rule 6A of Service Tax Rules, 1994. Revenue has not made any submission of legislative intent to deprive a provider of 'scientific or technical consultancy service' in the erstwhile regime of its status as exporter of service, amounting to change in the regime.

13. In the context of a catena of judgments and decisions that exports are not taxable and, with the most palpable manifestation of export of invisibles being the receipt of convertible foreign exchange from a recipient of service located outside the country, that services are taxable at the destination, the scope of rule 4 must necessarily be scrutinized to ascertain if there was, indeed, legislative intent to deny acknowledgement as exporter to a certain category of service providers that were so privileged till then. There is no dispute that the recipient of service is located outside India and that the consideration is received in foreign convertible currency. Yet, Revenue insists that performance of service is in India. A service is not necessarily, a single, discrete, identifiable activity; on the contrary, it is a series of invisibles that cater to the needs of a recipient; it is upon the consumption of the service by the recipient that service is deemed to have become taxable. This has been so held by the Hon'ble Supreme Court in *All India Federation of Tax Practitioners v. Union of India & Others*

"7. In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable on services provided within the country."

It would appear from the exposition in the judgment that the tax was intended as a levy on activities that would otherwise be performed by the recipient for itself. The new industry of hiring out or outsourcing of what was, conceivably, being done within the enterprise was intended to be subject to the new levy. In the matter of service rendered by respondent, this activity could, but for commercial viability, will be executed by the recipient within its own organization or the territory in which it exists. The satisfaction of the customer occurs upon an outcome which is possessed by the recipient. Hence, even if some of the activities are carried out in India, by no stretch can it be asserted that the fulfilment of the activity is in India. Therefore, the inescapable conclusion is that the location of the actual performance of the service is outside India and, even with the special and specific provision of rule 4 of Place of Provision of Services, 2012, the performance of service being rendered outside India would render it to be an export.

1.8. By this elaboration, we have amplified our earlier decision in *(re Sai Life Sciences Ltd)* that it is contrary to law to isolate an expression in a rule to deny the general principle built into all indirect tax statutes for exempting export of services from levy."

1.8. In any event, as it has been held in a number of precedents, the nature of transaction and the scope of the contract depends on the intention of the parties which is to be determined on a construction of the contract. The Marketing Agreement between the Applicant and Sabre APAC clearly does not intend to create any agency, partnership or joint-venture between them.

1.9. It is a settled principle in law that the intention of the parties to the document is more relevant than words used in the document. The same is even described in the legal maxim '*intention in literis aet in cortice*.'

1.10. In the case of *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel* reported in (2006) 8 SCC 726, the Supreme Court quoted with approval the principles of construction of contracts from 'Interpretation of Contracts' by Kim Lewison, Q.C. which states that "for the purpose of the construction of contracts, the intention of the parties is the meaning of the words they have used. There is no intention independent of that meaning." Herein, reliance is also placed on the judgment in the case of *G.S.Lambha & Sons v. State of Andhra Pradesh* reported in 2015 (324) ELT 0316 AP which reiterates the same.

1.11. Besides, it is also a settled position of law that a Contract or Agreement must be read as a whole and not piecemeal. In this respect, the Applicant relies on the Supreme Court in the case of *Super Poly Fabriks v. CCE, Punjab* reported in 2008 (10) STR 545 S.C wherein the Supreme Court held as follows:

"8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof."

1.12. Also, the Applicant also refers to para 5.9.6 of the Education Guide issued by the Central Board of Excise and Customs (hereinafter referred to as 'CBEC') in the year 2012 which states that it is expected the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the main service.'

1.13. In the present case, the Marketing Agreement does not entrust such authority on the Applicant, nor is there any other authorising document establishing agency between the Applicant and Sabre APAC. Thus, the services rendered by the Applicant are on a principal to principal basis and qualify as export of services and the same cannot be considered to be intermediary services as per Section 2(13) of the IGST Act.

2. Submission with interpretation of the term intermediary services under Section 2(13) of the IGST Act

2.1. Section 2(13) of the IGST Act, defines an intermediary to mean "a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services on his own account."

2.2. It is submitted that the above definition can be divided into three parts, viz.

(i) the means clause defining the nature of the service provider

(ii) the nature of services provided and

(iii) the exclusionary part which carves out an exception for the "person who supplies such goods or services on his own account."

NATURE OF THE SERVICE PROVIDER

2.3. Based on the above, it clear that an intermediary should 'mean', a broker or an agent or any other person, by whatever name called. Here, it is pertinent to note the use of the word 'means' in the said definition. It is trite law that the use of the word 'means' in a definition governs the words following it and has a restrictive meaning. Thus, in the present case, an intermediary can mean only a broker, an agent or any other person, by whatever name called.

2.3.2. In this respect, the first two words in the means clause are 'broker' or 'an agent'. The words 'broker' and 'agent' have been defined in the Black's Law Dictionary as follows:

"*Broker*: One employed to make bargains and contracts between other persons, in matters of trade, commerce, or navigation, for a remuneration commonly called "brokerage"

"*Agent*: One who represents and acts for another under the contract or relation of agency. 9. v. Classification. Agents are either general or special.

"*Agent*: A general agent is one employed in his capacity as a professional man or master of an art or trade, or one to whom the principal confides his whole business or all transactions or functions of a designated class; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment.

2.3.3. The dictionary meanings extracted above, clearly indicate that there is an element of 'representation' or 'acting on behalf of the other person' present in the words. In other words, 'agent' and a 'broker' do not work at their own behest or instruction but as a representative or on behalf of their principal. Further, the last phrase in the means clause of the definition of 'intermediary' contains the clause "or any other person, by whatever name called". Accordingly, the question that has to be asked is whether the 'any other person' will have a nature/ character distinct from that of a broker or an agent or will it continue to have the same nature and character as that of a broker or an agent.

2.3.4. The Golden Rule of Interpretation enunciated and espoused by various judicial pronouncements states that the words of a statute must be given their plain grammatical meaning. The intention of the legislature has to be gathered and deciphered in its proper spirit having due regard to the language uses therein. But, when the words are unclear or ambiguous, aid of other rules of interpretations must be used.

2.3.5. The most appropriate rule of interpretation which is to be used while interpreting the phrase 'by whatever name called' is the principle of 'ejusdem generis'. The application of this Rule is necessitated because of the use of a general phrase preceded by specific words. The words 'ejusdem generis' mean 'of the same kind or nature'. 'Ejusdem generis' is a rule of interpretation whereby when a class of things is followed by general wording that is not itself expansive, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words.

2.3.6. The rule of 'ejusdem generis' is applied in the following cases:

- The statute enumerates the specific words
- The subjects of enumeration constitute a class or category
- That class or category is not exhausted by the enumeration



- The general terms following the enumeration, and
- There is no indication of a different legislative intent.

2.3.7. In the case of CIT v. Rani Tara Devi reported in [2013] 355 ITR 457 (P & H), the Hon'ble Punjab and Haryana High Court had held as follows:

"The expression 'by any other name' appearing in Item (a) of clause (iii) of Section 2 (14) of the Income Tax Act has to be read ejusdem generis with the earlier expressions i.e. municipal corporation, notified area committee, town area committee, town committee."

2.3.8. The phrase 'by any other name' and 'by whatever name called' have a proximate purpose in a statute and hence the principle laid down by the P&H High Court supra will apply on all squares. In this respect, the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Udaipur v. McDowell & Co. Ltd. in civil Appeal 2939/2009 decided on 8 May 2009 held as follows:

"10. It would be pertinent to note that the expression now used in Section 43B (1)(a) is 'Tax, Duty, Cess or fee or by whatever name called'. It denotes that items enumerated constitute species of the same genus and the expression 'by whatever name called' which follows preceding words 'Tax', 'Duty', 'Cess' or 'fee' has been used ejusdem generis to confine the application of the provisions not on the basis of mere nomenclatures, but notwithstanding name, they must fall within the genus 'taxation' to which expression 'Tax', 'Duty', 'Cess' or 'Fee' as a group of its specie belong vis. compulsory exaction in the exercise of State's power of taxation where levy and collection is duly authorised by law as distinct from amount chargeable on principle as consideration payable under contract."

2.3.9. The Applicant also relies on the CBEC Circular bearing No. 83/1/2006-ST dated 4 July 2006 issued by the CBEC, wherein the applicability of the principle of 'ejusdem generis' with respect to the term 'any other person' was interpreted to be mean as follows:

"3. Banking and other financial services are defined under section 65(12). Such services provided to a customer by a banking company or a financial institution including a non-banking financial company or any other body corporate or any other person to a customer are liable to service tax under section 65(105)(zm). The expression 'any other person' appearing in section 65(105)(zm) is to be read ejusdem generis with the preceding words. The expression 'other financial services' appearing under section 65(12)(a)(ix) is a residuary entry and includes; those services which are normally rendered by banks or financial institutions"

(emphasis supplied)

2.3.10. Thus, applying the principle laid down by the Hon'ble Supreme Court, supra, and the interpretative rule of 'ejusdem generis', the phrase 'by whatever name called' will include a person in the same genus as that of a broker or an agent. In other words, the phrase 'by whatever name called', will mean a person who is also appointed in a representative capacity.

2.4. NATURE OF THE SERVICE

2.4.1. It is submitted that the said portion defines the nature of transactions which if provided by a broker or an agent by any person (by whatever name called) would be covered under the services provided by an 'intermediary'. As per the definition the broker, agent of any other person will arrange for the provision of service or facilitates the provision of a service (or supply of goods) between two or more persons. The words that have been used in the definition are - (i) arranges and (ii) facilitates. As a result, it would be pertinent to understand the meaning of these words. The said two words are generally defined as under:

Arrange: 'plan, organize, and carry out'

Facilitate: 'to make (an action or process) easy or easier'

2.4.2. From the above definitions it is clear that the intermediary being a broker or an agent, or any person acting on behalf of the principal, arranges or facilitates the supply of goods or services between two or more persons. Thus, the contract or agreement between the principal and agent (broker/ any other person) assumes a great deal of importance to understand whether it facilitates or arranges for the provision of service or supply of goods between two or more persons.

2.4.3. It is clear from the above that in order to qualify as an 'intermediary' the person should not be providing main service on his own account. Consequently, services rendered on principal-to-principal basis would not be covered under the subject definition.

2.4.4. Based on the above, an intermediary is a person who arranges or facilitates the supply of goods or services, or both. For that reason, he would be involved with the provision of two supplies simultaneously, viz.:

- The supply between the principal and the third party; and
- The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

2.4.5. In the present case, all the activities carried out by the Applicant constitutes as a single supply which is the only supply to Sabre APAC. There are no two supplies made by the Applicant in this respect. Further, the supply made by the Applicant does not consist of any activity in the nature of 'arrangement' or 'facilitation' as explained above.

2.4.6. The Applicant would also like to refer to qualifying conditions for 'intermediary services' described in para 5.9.6 of the CBEC Education Guide. The said conditions are reproduced below for ease of reference:

"Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal."

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as 'commission'!

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable."



2.4.7. The Applicant clearly does not fulfil the above conditions prescribed in CBEC Education Guide and cannot be treated as an intermediary as per the inclusionary part of the definition under Section 2(13) of the IGST Act. The Applicant draws support from the statement at the end of para 5.9.6 of the CBEC Education Guide which, in the context of 'Intermediary Service' gives the following example:

"Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client on the client's behalf, but actually provided these services on their own account, will not be categorized as intermediaries."

2.4.8. The Applicant would also like to refer to judgments under the UK VAT law, where the question of activities carried out by an 'intermediary' had been analysed. The relevant extract of the said judgements reads as follows:

2.4.9. *In M/s Bookit Ltd v Customs and Excise reported in (2004) UK VI8626 (28 May 2004), it has been held that an intermediary ought to play an active role in the capacity of an agent of the insurance finance company and a mere introductory role or generation of leads on prospective customers shall not suffice. The assessee therein was involved in the activity of providing credit card handling services to cinema customers booking tickets through various distribution channels including call centre, internet, WAP and digital TV. In addition, the assessee was also providing information, data processing services, credit management services and record keeping to cinema operator for other card transactions. The relevant para of the judgment has been excerpted:*

88. *However the statute must be interpreted consistently with the Sixth Directive as interpreted by the Court of Justice. In CSC the Court of Justice said this at paragraph 39, "Negotiation is a service rendered to, and remunerated by a contractual party as a distinct act of mediation. It may consist, among other things, in pointing out suitable opportunities for the conclusion of such a contract, making contact with another party or negotiating, in the name of or on behalf of a client, the detail of the payments to be made by either side. The purpose of negotiation is therefore to do all that is necessary in order for two parties to enter into a contract, without the negotiator having any interest of his own in the terms of the contract."*

90. *In our judgment the services of the employees of Bookit in obtaining card information and transmitting the same to Girobank do not involve any act of mediation on behalf of the customer. The only matters mentioned in paragraph 39 of CDC which could be relevant are "making contact with another party" here Girobank. However, it does not seem to us that the mere transmission of card information suffices for "negotiation" or it follows does such transmission come within "intermediary services" in item 5."*

(emphasis supplied)

2.4.10. Similarly in Leadx v. Revenue & Customs reported in (2008) UKVAT V20904 (19 December 2008) it has been held that introducing customers to the seller is not sufficient for a service provider to qualify to be an intermediary. In this case the assessee was inter alia engaged in the activity of facilitating telecommunication and data services for trading of loan and insurance leads. In other words, the assessee was engaged in providing an open market for purchase/ sale of loans and insurance products from brokers via its internet based bidding system. The relevant para of the judgment is extracted hereunder for the ease of reference:

16. *The Appellant's relationship with the seller and buyer was governed by the same generic contract. Under the contract the Appellant granted the seller and buyer a non-exclusive licence to use the Appellant's software platform in return for consideration which consisted of 70 per cent of the fee charged by the seller, and a commission of 15 per cent on the price paid by the buyer. The consideration was not dependent upon the buyer completing a contract for credit or insurance but triggered when the requirements for a chargeable lead were met.*

41.

*** *The Appellant's contact with potential consumers was for the purpose of enhancing the marketability of the lead not to secure a financial product for the consumer or to match him with the most appropriate broker. I find that the Appellant's supplies were about selling leads, not about the making and negotiation of credit.*

42.

*** *The Appellant's priority was to sell leads to the highest bidder. The Appellant's interest ceased once the information was passed to the buying broker. The Appellant's dealings with potential consumers whether electronically or in person were performed to obtain information for improving the marketability of the leads. The dealings were not entered into with a view to securing a contract for a loan. I find that the Appellant's supplies had no direct link with the process for negotiating credit arrangements between brokers and potential consumers.*

59.1. *therefore, hold that the Appellant was not an insurance agent or broker. The Appellant had no relationship with the insurer or the insured. The Appellant sold leads and did not introduce potential clients. The Appellant's supplies were not related services. Their character had nothing to do with insurance. The information gathering and sorting exercise was for the purpose of making the lead marketable not to facilitate an insurance transaction. The supplies did not form a close nexus with an insurance transaction and effectively constituted a separate deal outside any insurance negotiations" 60. *** My findings that the Appellant had no relationship with potential consumers for insurance products or insurers and that its supplies constituted a discrete and self-contained activity between brokers with no connection with insurance transactions demonstrated that the Appellant did not provide the services of an insurance intermediary."*

2.4.11. From the above judgments under UK VAT law, the following legal position emerges:

- Mere introduction of buyer with the seller is not sufficient for a service provider to qualify to be an intermediary. Activity of gathering information / sorting the same does not necessarily mean that it is an act of facilitating provision of the main service.

- The 'intermediary' plays a proactive part in putting in place the arrangements under which the supply of the main service is made. The 'intermediary' typically undertakes the arrangement or facilitation of a main service by way



of active introduction, support in order processing, support in negotiation of contractual terms, support in collection of price etc.

- Negotiation is a pre-requisite for qualifying to be an intermediary. Negotiation means carrying out all the necessary activities end to end which would entail two parties to enter into a contract, without the negotiator having any interest of his own in the terms of the contract.

2.4.12. The above-mentioned principles can be applied into the present factual matrix to determine whether the Applicant qualifies as an intermediary. Thereby, as per the various clauses of the Marketing Agreement between the Applicant and Sabre APAC, the following factual position emanates:

-The Applicant is providing business support services and allied activities to Sabre APAC

-Services provided by the Applicant are preparatory and supportive in nature rather than facilitating any provision of services by Sabre APAC

-No payments are routed through the Applicant.

-The Applicant merely supports and has no right to actually negotiate, finalize or change the price already fixed by Sabre APAC.

2.4.13. Also, considering the bi-partite nature of the Marketing Agreement, the Applicant provides marketing, promotion and distribution services only to Sabre APAC and not to any other party. Further, for the provision of the said services, the Applicant receives compensation from Sabre APAC, on a cost-plus markup basis, which it is entitled to irrespective of the number of booking made on the said CRS Software. Thus, even in the unlikely event of no business being generated from the territory, the Applicant will receive compensation as per the valuation enumerated in paragraph C of the background hereinabove. This itself should establish that there is no other supply except the supply to Sabre APAC and therefore the said Marketing Agreement does not create any agency between the Applicant and Sabre APAC, the services rendered by the Applicant cannot be categorized as intermediary services.

2.4.14. In fact, Article 11 of the Marketing Agreement dated 31 October 2016 specifically establishes that the Applicant does not act as the agent of Sabre APAC nor does the Applicant *does not have the authority to act in the name or on behalf of or otherwise bind* Sabre APAC in any manner in relation to the services rendered by them under the said Agreement.

4.5. EXCLUSIONARY PART - 'SUPPLY ON HIS OWN ACCOUNT'

2.5.1. The exclusionary part of the said definition as stated in Para 2.2 above excludes from its purview any person (including a broker, agent or any other person) who provides the main supply on his own account will not qualify as an intermediary. In other words, if a person provides the supply on his own account, then such a supplier is not covered under the definition of term intermediary.

2.5.2. Herein a reference is made to para 5.9.6 of the CBEC Education Guide 2012, wherein the situation where services are rendered on the persons own account is specifically highlighted. The relevant extract reads as follows:

*'When the freight forwarder acts on his own account (say, for an export shipment) A freight forwarder provides domestic transportation within taxable territory (say, from the exporter's factory located in Pune to Mumbai port) as well as international freight service (say, from Mumbai port to the international destination), under a single contract, on his own account (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the exporter. This is a service of transportation of goods for which the place of supply is the destination of goods. Since the destination of goods is outside taxable territory, this service will not attract service tax. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation-loading, unloading, handling etc.) are "bundled" with the principal service owing to a single contract or a single price (consideration). ****'*

2.5.3. Thus, even persons who provide services to their clients by dealing with the customers of their client on the client's behalf, but actually provided these services on their own account, will not be categorized as intermediaries under the said definition. Accordingly, in the present case, even if it is assumed that the Applicant arranges' or 'facilitates' the supply between Sabre APAC and its customers, since all the services are rendered by the Applicant to Sabre APAC on a principal-to-principal basis, the services would get covered under the exclusionary clause of the said definition under Section 31(1) of the IGST Act. **Herein reliance is also placed on the ruling in the case of Global Transportation Services Pvt. Ltd reported in 2016 (45) STR 574 (AAR).**

2.5.4. It is further submitted that the relationship of the Applicant with Sabre APAC is separate from the relationship between Sabre APAC and its clients. The Applicant engages with Sabre APAC's clients only in pursuance of the services to be rendered to Sabre APAC which it provides on its own account and not as an agent of Sabre APAC.

2.5.5. In the CBEC Circular bearing No. 334/4/2006-TRU dated 28 February 2006, issued during the erstwhile regime on introduction of business support services' the nature of the services covered under the said head has been clarified as follows:

*'3.13 Business Support Services: Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant along with secretarial assistance known as 'Business Centre Services'. It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. ****'*

2.5.6. Accordingly, the services rendered by the Applicant being outsourced services of Sabre APAC would have been clearly classifiable as 'business support services' under the erstwhile regime. In the GST regime, the said services head is includable under the HSN code 9985 relating to 'other support services.' However, it is pertinent to note, that the said services are not provided by the Applicant on behalf of Sabre APAC, but on its own account on a principal-to-principal basis.

2.5.7. In the above case, while there is an arrangement involving the Applicant, Sabre APAC as well as the customers of Sabre APAC, the Applicant's engagement with Sabre APAC's customers is in pursuance of the promotion and distribution activities carried out by the Applicant. The Applicant approaches the potential customer and subsequently may even undertake analysis of their business activities in order to determine the viability for use of the CRS Software.



but the actual provision of the services of access to CRS Software is provided by Sabre APAC. Besides, even the interaction with the potential or confirmed customer of Sabre APAC is done by the Applicant on its own account and not as an agent of Sabre APAC.

2.5.8. Herein, the Applicant places reliance on the following judgments of the CESTAT which hold that the person could at the same time act as an agent and also on principal to principal basis with respect to the same line of activity.

(i) Greenwich Meridian Logistics (I) Pvt. Ltd. v. CST, Mumbai [2016 (43) STR 216 (Tri. - Bom.)]

(ii) Phoenix International Freight Services Pvt. Ltd. v. CST, Mumbai - II [2017 (47) STR 129 (Tri. - Mum.)]

2.5.9. Therefore, the services rendered by the Applicant are not classifiable as under Section 2(13) of the IGST Act, the same being rendered by the Applicant's on its own account.

2.6. In view of the facts and the legal provisions, the Applicant respectfully submits that the services rendered by them to Sabre APAC would be treated as an export of services under Section 2(6) of the IGST Act and hence not be non-taxable for the purpose of payment of GST under the provisions of GST Law.

Details of the Marketing Agreement dated 31 October 2016

1. Background:

1.1. The Applicant, viz. Sabre Travel Network India Pvt Ltd, has obtained a non-exclusive, royalty-free right and license from its parent company i.e., Sabre APAC, to distribute the CRS Software in India vide a Marketing Agreement dated 31 October 2016 with effect from 01 April 2016. The scope of the services provided by the Applicant under the terms of the said Marketing Agreement are:

- Marketing services including advertising, identifying potential customers, identifying business opportunities, demonstrating offerings;

- Consultancy and provision of information services;

- Marketing support services, including PR, promotions, sponsorship, and special events and trade shows; and

- Any other services necessary or advisable to perform its obligations under the said Marketing Agreement.

1.2. The entire gamut of services are provided in an integrated manner to Sabre APAC, and for consideration the Applicant raises a consolidated monthly invoice for the fees to be received from Sabre APAC for all the services rendered to them. The said fees, which is received in the form of convertible foreign exchange, is calculated on a cost plus a markup basis as per the terms of the said Marketing Agreement. Further, the amount so received is in accordance to the domestic arm's length requirements under the local transfer pricing laws.

1.3. A detailed explanation of the services rendered and duties of the parties under the said Marketing Agreement is explained hereunder:

2. Marketing Agreement and its Operation:

2.1. In view of the above, the Applicant undertakes the following activities in relation to the marketing and promotion services provided by them under the Marketing Agreement dated 31 October 2016:

- While marketing access to the CRS Software, the sales team of the Applicant approaches potential subscribers in India to whom they explain the features of the CRS Software and the flexibility of same to integrate with the potential subscriber's system for smooth functioning;

Thereafter, in the event of a positive response, the Applicant scans the credentials and the business potential of the subscriber to whom it proposes to market the CRS Software;

Based on an organizational and workflow analysis of the subscriber and following a background check of their prior activities, the Applicant logs on a request into the system through the website maintained by Sabre APAC called Subscriber Communication Management System. This is an automated process wherein a request is placed by the Applicant to create a Pseudo City Code;

Simultaneously, provided the subscriber agrees to use the CRS Software, order forms are collected from them to begin the process for activation of the CRS Software following the creation of the Pseudo City Code;

When the subscriber meets all the criterion set forth by Sabre APAC for subscription, it is registered successfully and a Pseudo City Code is allotted in its favor. Once the Code is allotted and the setup is activated, the Applicant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems.

2.4. In this manner, once the organizational and workflow analysis is complete, the Applicant undertakes reporting of the results in the Subscriber Communication Management System owned by Sabre APAC. Consequently, the scouting of potential subscribers and the said organizational and workflow analysis of such potential subscribers are the deliverables by the Applicant which is submitted in the Subscriber Communication Management System in the form of a non-binding request.

2.5. Herein, the responsibility of the Applicant, stands completed on the identification of the potential subscribers to Sabre APAC. Subsequently, their responsibility of providing marketing support services (e.g. installation of interfaces to the CRS Software, consultancy, assistance, provision of information services, etc.) relating to the CRS System arises only once Sabre APAC decides to accept the potential customer based on the analysis provided by the Applicant.

2.4. Thus, based on the analysis of the subscriber's business provided by the Applicant, Sabre APAC makes a decision on whether or not to allot a Pseudo City Code to the potential subscriber and it is only following an affirmative decision that the Applicant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems. The decision to permit the subscriber's to have access to the CRS Software is based on the internal criterion set forth by Sabre APAC and the Applicant is not involved in the decision making process.

3. Marketing Support Services:

3.1. Additionally, the Applicant also undertakes sales promotion and marketing support activities to advance the business of Sabre APAC in India. This includes marketing support services such as PR, promotions, sponsorship, special



events and trade shows, as well as any other services necessary to perform its obligations under the Marketing Agreement.

3.2 Such services are provided with the aim to make the CRS Software the reservation system of choice for subscribers and to strengthen the subscribers trust in the brand 'Sabre' so as to augment Sabre APAC's business in India.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

M/s. Sabre Network (India) Pvt. Ltd. have filed an application with Advance Ruling Authority (ARA), GST Bhavan, Mazgaon, Mumbai - 400 010 on 13.04.2018. In the application, they asked the question as to :-

"Whether the marketing, promotion and distribution services provided by M/s. Sabre India to Sabre APAC would be subject to tax under IGST Act 2017 and Maharashtra GST Act 2017 or would remain excluded under the said acts, as the said activities qualify as export of service in accordance to Section 2(6) of the IGST Act 2017 read with the said Tax Acts. ?"

In support of their above question, during the course of personal hearing held on 17.07.2018, in the office of Authority of Advance Ruling, GST Bhavan, Mazgaon, Mumbai - 400 010, they submitted the following facts to the notice of the authority.

M/s. Sabre Network (India) Pvt. Ltd. (hereinafter referred as the Applicant) is private limited company engaged in the provision of marketing, promotion and distribution of the Computer Reservation System Software ('CRS Software') within the territory of India.

The CRS Software has been developed by M/s. Sabre GBL Inc. as a global distribution system which performs various functions including airline seat reservations, scheduling, automated ticketing and fare displays, booking for a variety of air, car and hotel services, etc.

Sabre APAC, the Applicant's parent company situated in Singapore, has been sub-licensed the right to market and promote the said CRS Software for Asia specific jurisdictions.

Further, it has been authorised to further sub-license certain parts of its marketing rights and obligations to local-country distributors. Accordingly, Sabre APAC has appointed the Applicant as the National Marketing Company vide a Marketing Agreement dated 31 October 2016, pursuant to which the Applicant has been granted a non-exclusive right to market and distribute the CRS Software to various travel agents in India.

Under the said Marketing Agreement, the Applicant provides a range of services relating to marketing and sales promotion which includes advertising, consultancy, public relations, promotions, marketing support services, etc. These services are rendered by the Applicant to Sabre APAC for which consideration is payable by Sabre APAC in the form of convertible foreign exchange, calculated on a cost-plus markup basis. The cost-plus markup basis comprises of the monthly qualifying cost which is the sum of all costs incurred by the Applicant in the process of provision of service together with a profit margin of ten percent thereon and is the basis adopted for purpose of Transfer Pricing provision under the Income tax Act. Herein, transfer pricing study and documentation is one of the procedures to be followed under the Income Tax laws of India and it forms the basis for assessment of corporate taxes by the Income Tax department.

However, the Marketing Agreement between the Applicant and Sabre APAC, does not establish any agency between the parties and all the services are rendered by the Applicant principal-to-principal basis. Further, the said Agreement does not operate to create any partnership or joint venture of any kind between the Applicant and Sabre APAC.

In light of the above, the Applicant has preferred an Application before this Authority for Advance Ruling seeking to determine whether there arises any liability to discharge Goods and Service Tax ('GST') on the services rendered to Sabre APAC situated outside India.

FINDINGS:-

In this context, it is to submit that:-

- M/s. Sabre GBL Inc, is the foreign company who developed the CR software.
- Secondly, M/s. Sabre APAC, Singapore based company has been sub-licensed the right to market and promote the said CRS Software for Asia specific jurisdictions.
- At lastly, Sabre APAC has appointed M/s. Sabre Network (India) Pvt. Ltd the National Marketing Company vide a Marketing Agreement dated 31.10.2016 granting a non-exclusive right to market and distribute the CRS Software to various travel agents in India.

Section 2(13) of the IGST Act, defines an intermediary to mean "a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services on his own account."

In their submission dated 17.07.2018, before Adjudicating authority, the applicant submitted their Marketing Agreement dated 31.10.2016, wherein it clearly stated that "

1.1. It is submitted that the Marketing Agreement dated 31 October 2016 creates an obligation on the Applicant to provide marketing, promotion and distribution services to Sabre APAC in relation to the CRS Software, within the territory of India. The Applicant identifies potential customers and once the said customer is accepted by Sabre APAC, it provides after-sales services as may be required. Further, all promotion and marketing support services provided by the Applicant is towards the objective of building the customer base of the CRS Software in India or in relation to the same.

As stated above, M/s. Sabre Network (India) Pvt. Ltd. works for Sabre APAC, but does not appear to supply the CR software on his own account and therefore, falls under the services viz. Intermediary Services and the appears liable for tax under IGST Act 2017.

None of the case laws, cited by the applicant are applicable to the present case as the facts and circumstances are different.

04. HEARING

The case was taken up for preliminary hearing on dt. 26.06.2018, with respect to admission or rejection of the application when Sh. Irshad Ahmed, Advocate along with Sh. Rajeev Pallath Advocate appeared and made oral and written submissions as per contentions made in ARA. The jurisdictional officer, Sh. Rajiv Kant Nirala, Inspector appeared and stated that they were not making any submissions today and would be making submission in due course.

The application was admitted and final hearing was held on 17.07.2018, Sh. S. Thirumalai Advocate along with Sh. Irshad Ahmed, Advocate and Sh. Rajeev Pallath Advocate appeared and made additional written submissions. They orally made contentions as per their ARA application. The jurisdictional officer, Sh. Nijay Lande, Supdt., appeared and stated that they would be making submissions in due course.

05. OBSERVATIONS

We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department.

Briefly stated the Applicant has stated that they have obtained a non-exclusive, royalty-free right and license from its parent company i.e., Sabre APAC, to distribute the CRS Software in India vide a Marketing Agreement dated 31 October 2016 with effect from 01 April 2016. Pursuant to the said Agreement, the Applicant has been appointed as the National Marketing Company to conduct marketing and promotion of access of the CRS Software to end subscriber's viz. travel agents in India.

Sabre GBL Inc., an affiliate of Sabre APAC and the applicant, had developed a global distribution system which uses a Computer Reservation System Software ('CRS Software') which it owned and operated and for sales outside the USA, granted to Sabre Marketing Nederland B.V., a non-exclusive right to market and promote the said CRS software, which was further sub licensed to Sabre APAC for the Asia Pacific region.

In view of the Marketing Agreement dated 31 October 2016 between Sabre APAC and the applicant, to market the CRS software, the sales team of the Applicant approaches potential subscribers in India to whom features of the CRS Software and the flexibility of the same to integrate with the potential subscriber's system for smooth functioning are explained. In the event of a positive response from the subscriber, the Applicant scans the credentials and the business potential of the subscriber to whom it proposes to market the CRS Software and based on an organizational and workflow analysis of the subscriber and following a background check of their prior activities, the Applicant logs on a request into the system through the website maintained by Sabre APAC called Subscriber Communication Management System. This is an automated process wherein a request is placed by the Applicant to create a Pseudo City Code. Simultaneously, provided a subscriber agrees to use the CRS Software, the applicant collects order forms from the subscriber to begin the process for activation of the CRS Software following the creation of the Pseudo City Code. If the subscriber meets all the criterion set forth



by Sabre APAC for subscription, it is registered successfully and a Pseudo City Code is allotted in its favor. Once the Code is allotted and the setup is activated, *the Applicant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems.*

From the submissions made by the applicant it is clear that they are on the lookout for potential subscribers who are willing to use the CRS software in their business. It is also important to note that these potential subscribers also require such software for use in their business and require the help/assistance of the applicant to reach out to Sabre APAC to obtain the said software.

Admittedly, the Applicant also undertakes sales promotion and marketing support activities to advance the business of Sabre APAC in India by way of giving marketing support services which includes activities such as PR, promotions, sponsorship, special events and trade shows, as well as any other services necessary to perform its obligations under the Marketing Agreement and to make the CRS Software the reservation system of choice for subscribers and to strengthen the subscribers trust in the brand 'Sabre' so as to augment Sabre APAC's business in India.

Whilst making their submissions the applicant has claimed that the services being provided by them is only to Sabre APAC and since Sabre APAC is situated outside the taxable territory of India, and the same would qualify as export of services as defined under Section 2(6) of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as 'IGST Act') read with Central Goods & Services Tax Act 2017 and the Maharashtra Goods & Services Tax Act 2017 (hereinafter referred to as "Said Tax Acts"). They have also submitted that since they provide the services to Sabre APAC on principal to principal basis with the only intention of promoting and marketing of CRS Software in India, such services shall not qualify as Intermediary Services under the GST Laws.

In view of the submissions made by the applicant we find that the issue before us is whether or not the applicant is providing Intermediary Services. If the services provided are Intermediary Services then as per the GST Laws the applicant will be liable to tax.

It is seen that the applicant has given detailed submissions, which are reproduced above, contending that the service provided by them are not in the nature of Intermediary Services and therefore it is their contention that the subject services provided by them to Sabre APAC are actually export of services as per the GST Laws.

In view of the above details we need to examine whether the services provided by the applicant are Intermediary Services or not:

In simple terms 'intermediary' can be taken to be as a firm or a person, etc. who acts as a link between parties for the conduction of business, etc. We find from the question posed that the applicant is having doubts as to whether their services are taxable under CGST Act and MGST Act or whether their services are exempt under the IGST Act, being export of services.

To arrive at a decision we first take up the definition of an intermediary as per GST laws. The term 'Intermediary' is defined in Section 2(13) of IGST Act, 2017 as:- *'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or*



both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account"

From the above definition we find that an intermediary can be a broker, an agent or any other person and either facilitates the supply of goods and/or services between two or more persons and who cannot change the nature of supply as provided by the principal.

From the facts before us we find that the applicant is covered by the said definition of an intermediary because they are definitely acting as a broker/agent, etc and facilitating the process for sale of CRS Software belonging to their foreign parent company, to the Indian subscribers because they identify such subscribers on their own in India. It is the sales team of the Applicant which approaches potential subscribers in India to whom they explain the features of the CRS Software and the flexibility of said software to integrate with the potential subscriber's system for smooth functioning. Once the applicant gets a positive response from the subscriber, they scan the credentials and the business potential of the subscriber to whom it is proposed to market the CRS Software. Based on an organizational and workflow analysis of the subscriber and following a background check of their prior activities, the Applicant logs on a request into the system through the website maintained by Sabre APAC called Subscriber Communication Management System. Provided the subscriber agrees to use the CRS Software, order forms are collected from them to begin the process for activation of the CRS Software. Once the subscriber is registered successfully and a Pseudo City Code is allotted in its favor. Once the Code is allotted and the setup is activated, the Applicant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems.

Thus from the above we find that first and foremost it is the job of the applicant to scout for subscribers in India. It is nowhere mentioned that the subscribers come on their own to the applicant. Thus the applicant explains and educates the subscriber about the software. Hence it is clear that the subscriber becomes aware of the software only after the applicant approaches them. It is also mentioned that the software does not belong to the applicant. Thus we find that the applicant actually acts as an Intermediary between the potential subscriber and Sabre APAC. The applicant is not providing services on their own. The software belongs to the parent company. The applicant educates the subscriber about the software which they would not have known if the applicant was not present as an intermediary between them and the owner of the CRS software.

It is very clear from the facts of transaction that the applicant is not providing services on their own account but on account of Sabre APAC, and thus it is very apparent that the applicant is providing Intermediary Services in the instant case.

Since the applicant, being the supplier of service is located in India and the recipient of Service i.e. supplier of goods is located outside India, Section 13 of the IGST Act, 2017 would be applicable to determine the place of service. As per Section 13 (8) (b) of the said Act, **the place of supply of Intermediary Services shall be the location of the supplier of services**, in this case, the applicant. Since the place of supply of services in the instant case is in taxable territory, the said intermediary services cannot be treated as export of services under the provisions of the GST laws.



In order to classify as 'export of service', as per section 2(6) of the Integrated Goods and Service Tax Act, 2017, one of the crucial condition as contained under sub-clause (iii) requires that the place of supply of service should be outside India. In the subject case, the place of supply shall be location of the supplier of services and therefore such 'intermediary services' cannot be classified as 'export of services'.

We now discuss Inter-state provisions as well as Intra State provisions under the GST laws as follows:-

Inter State provisions are contained under section 7 of the Integrated Goods and Service Tax Act, 2017 and since none of the specific provisions are applicable, residuary provision contained under section 7 (5) (c) shall be made applicable in the case of intermediary service, which states that inter-state supply of goods or services or both in the taxable territory shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce, however, the same should not be an intrastate supply and should not be covered elsewhere in section 7 of the IGST Act.

Section 8 of the Integrated Goods and Service Tax Act, 2017 deals with the provisions of intra-state. Applying the provisions of section 8 (2) which states that 'subject to the provisions of section 12, in case where the location of the supplier and the place of supply of services are in the same state or in the same union territory, the supply of service shall be treated as intra-state supply'.

The above provisions of inter-state supply and intra-state supply has clarity when both the recipient and the supplier of services are located in India. However as in the subject case, when the recipient is located outside India provisions of section 7 (5) (c) shall be applicable. Section 7(5)(c) is reproduced as under:-

supply of goods or services or both-

a) Where the supplier is located in India and the place of supply is outside India,
b) To or by a Special Economic Zone developer or a Special Economic Zone unit: or
c) In the taxable territory, not being an intra-State supply and not covered elsewhere in this section,
shall be treated to be a supply of goods or services or both in the course of inter-State-trade or commerce.

As per intra-state provisions contained in Section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act. As per section 12, the provisions of section 12 would be applicable only for determining the place of supply of service where the location of supplier of services and the location of recipient of the services is in India. When recipient is located outside India the said provisions of section 12 cannot be made applicable and since provisions of section 8(2) are inter-linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India.

Thus we find that in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5) (c) shall be applicable and hence IGST is payable under such transaction.

With respect to the case laws cited by the applicant it is seen that none of the case laws are applicable in respect of the present case as the facts context and circumstances are different.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 08/2018-19/B- 76 Mumbai, dt. 26.07.2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- Whether the marketing, promotion and distribution services (hereinafter referred to as the "Said Services") provided by Sabre India to Sabre APAC would be subject to tax under the Central Goods & Services Tax Act 2017 and the Maharashtra Goods & Services Tax Act 2017 (hereinafter referred to as "Said Tax Acts") or would remain excluded under the said Acts as the said activities qualify as export of service in accordance to Section 2(6) of the Integrated Goods and Service Tax Act 2017 read with the said Tax Acts?

Answer :- The marketing, promotion and distribution services provided by the applicant to Sabre APAC would be subject to tax under the provisions of the GST Act.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant.
2. The concerned Central / State officer.
3. The Commissioner of State Tax, Maharashtra State, Mumbai.
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State tax, Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021