

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

ORDER NO. MAH/AAAR/SS-RJ/30/2018-19

Date- 10.04.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAACA4836HZZR
Legal Name of Appellant	Sabre Travel Network India Pvt Ltd
Registered Address	Urmi Estate, 14 th Floor 95, GanpatraoKadam Marg, Lower Parel West, Mumbai – 400 013
Details of appeal	Appeal No. MAH/GST-AAAR-30/2018-19 dated 10.01.2019 against Advance Ruling No. GST-ARA- 08/2018-19/B-76 dated 26.07.2018
Jurisdictional Officer	Asstt./Dy. Commissioner, Division-III, Mumbai Central

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 (hereinafter referred to as the "Appellant") against the Advance Ruling No. GST-ARA-08/2018-19/B-76 dated 26.07.2018.



BRIEF FACTS OF THE CASE

- A. The Appellant is a private limited company incorporated under the Companies Act, 1956. It is a direct and indirect 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 APAC - located in Abacus Plaza, 3 Tampines Central 1, #08-01, Singapore 529540, a non-exclusive right to market and promote the CRS Software 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 Appellant 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 Appellant has been appointed as the National Marketing Company to conduct marketing and promotion of access of the CRS Software to end subscribers viz. travel agent in India.
- E. The scope of the services provided by the Appellant 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 Operation:**

In view of the above, the Appellant 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 Appellant 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 Appellant 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 Appellant logs on a request into the system through the website maintained by Sabre APAC called Subscriber Communication Management System ("SCMS"). This is an automated process wherein a request is placed by the Appellant to create a Pseudo City Code, which is a system designation which allows tracking activity of the subscriber in the CRS Software;
- 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 Appellant'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 Appellant undertakes reporting of the results in the SCMS 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 Appellant which is submitted in the SCMS system in the form of a non-binding request.



Herein, the responsibility of the Appellant, 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 upon Sabre APAC deciding to accept the potential customer based on the analysis provided by the Appellant.

Thus, based on the analysis of the subscriber's business provided by the Appellant, 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 Appellant's engineers install user interfaces to access the CRS Software in the subscriber's computer systems. The decision to permit the subscribers to have access to the CRS Software is based on the internal criterion set forth by Sabre APAC and the Appellant is not involved in the decision-making process.

G. **Marketing Support Services pursuant to the Marketing Agreement:**

Additionally, the Appellant 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 Appellant 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.

I. Basis the above facts, the various roles and responsibilities of the Appellant and Sabre APAC under the Marketing Agreement dated 31 October 2016 are contrasted below:



Sr. No.	Functions	Duties of Sabre APAC	Duties of Appellant
1.	Strategic Management functions	Planning, formulating and implementation of business goals and vision inter alia based on inputs from the Appellant	No participation of the Appellant
2.	Engaging distributors including partners and re-sellers	Directly enters into contract with national marketing companies to undertake various services including marketing of the CRS software, support services, PR promotion, etc.	The Appellant 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 Appellant 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 sublicensed its marketing rights to local-country distributor.	The Appellant has been granted the non-exclusive right to market and promote CRS Software within the territory of India. Pursuant the same, the Appellant 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 Appellant has the right to negotiate and execute agreements with Subscribers. Subscriber agreements are entered



Sr. No.	Functions	Duties of Sabre APAC	Duties of Appellant
			<p>into by the Appellant 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. However, there are safeguards to protect the interest of Sabre APAC or Sabre India should the Subscribers use the system for unauthorised purposes or connect "malware" that may cause harm to the equipment of Sabre India or Sabre APAC</p>
4.	Responding to enquiries	Provide inputs as and when specifically sought by the Appellant	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 Appellant, Sabre APAC makes a decision on whether or not to allot the Pseudo City Code	The Appellant is required to provide consultancy and provision of information services in relation to potential customers.
6.	Acceptance or rejections of Subscriber Application	Subscriber applications are accepted or rejected directly by Sabre APAC at its sole discretion	No participation of the Appellant except as a communication channel where required by Sabre APAC



Sr. No.	Functions	Duties of Sabre APAC	Duties of Appellant
7.	Execution of contracts with customers	Access to the CRS Software, by the allotment of Pseudo City Code, is permitted by Sabre APAC	The Appellant provides marketing support services in relation to CRS Software 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 Appellant	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 Appellant	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 Appellant. 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 Appellant 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 Appellant to Sabre APAC are the main service provided by the Appellant to Sabre APAC on Appellant's own account.
- L. In light of the aforesaid facts, the Appellant sought to the Advance Ruling Authority to determine the liability to pay tax on services rendered by the Appellant to Sabre APAC under the Marketing Agreement dated 31 October 2016 and to obtain a ruling with regard to the question of law as mentioned below:

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?

- M. Vide the Order GST ARA 08/2018-19/B-76 Mumbai dated 26-07-2018 received on 12-12-2018 through e-mail and on 18-12-2018 through post issued under Section 98 of the CGST Act and Maharashtra Goods and Services Tax Act 2017 (MGST Act) the Authority has basis the findings recorded in the Impugned Order, answered the Question in the negative and declared that the marketing, promotion and distribution services provided by the appellant to Sabre APAC is subject to tax under the provisions of GST Act.
- N. Aggrieved by the Impugned Order, the Appellant is filing the present appeal on the following grounds which are without prejudice to one another:



GROUNDS OF APPEAL

SERVICES PROVIDED BY THE APPELLANT WOULD NOT QUALIFY AS AN INTERMEDIARY SERVICE IN TERMS OF SECTION 2(13) OF IGST ACT,

- 1. Use of digital infrastructure cannot ipso facto mean that the activity is as a broker or agent and cannot be regarded as facilitating the service**

The Appellant submits that the impugned ruling passed by the learned authority is erroneous in as much as the contours of digital marketing is different from the conventional marketing or sales activity. The learned authority has failed to appreciate the fact that the marketing activities undertaken by the Appellant cannot be regarded as facilitating the service. In this regard the appellant wishes to explain the outline of digital marketing which is different from conventional marketing. The use of hardware and technology provided by the principal in this case Sabre APAC Singapore has to be used to register the prospects for the use of software. These prospects turn up after showing interest based on the sales promotion activity undertaken by the Appellants. The scheme of activity identified in box SL No: 5 and 6 under Para (I) above in the statement of facts clearly establishes the nature of the marketing activity undertaken by the Appellants.

- 2. The Appellant submits that they undertake 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.**
- 3. The Appellant submits further that the array of services provided is in an integrated manner to Sabre APAC, and they raise a consolidated monthly invoice for consideration wherein the fees are 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.**



4. Therefore, it is submitted that the use of technology and hardware connectivity are the crucial elements for any interaction with the principal and the use of digital infrastructure cannot ipso facto mean that the activity is as a broker or agent and cannot be regarded as facilitating the service.

The relationship between the appellant and Sabre APAC is on principal to principal basis:

5. The Appellant submits that the learned authority has completely ignored the fact that the marketing agreement has clearly stated that the relationship is on principal to principal basis. This is brought out in Article XI of the Agreement cited at para J in the statement of fact hereinabove. The Appellant further submits that they raise 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 as applicable with reference to the Income Tax Act 1961.
6. The Appellant invites kind attention to the Advance Ruling issued by West Bengal Authority for Advance Ruling in Global Reach Education Services Pvt Ltd vide **GST-ARA-15/2017-18/B-30 dtd. 08.05.2018** wherein the question was as to whether the Appellant in that case was providing the recipient an intermediary service and making a taxable supply of service and liable to pay tax thereon. The learned Authority has held as below:

Promotional service is incidental and ancillary to the above principal supply and the Appellant is paid consideration in the form of Commission, based on performance in recruiting students, as a percentage of the tuition fee collected from the students enrolled through the Appellant. The Appellant, therefore, represents the University in the territory of India and acts as its recruitment agent. In fact, Clause 2.1 of the Background forming part of the Agreement clearly says, "The University engages the Education Agent to be its representative to perform the Services from the commencement date in the Territory and on the terms set out in this Agreement until the Expiry date." It is, therefore, clear that whatever services the Appellant provisions are



provided only as a representative of the University and not as an independent service provider.

The Appellant aggrieved by the said ruling appealed to the Appellate Authority wherein the appellate authority vide **01/WBAAAR/Appeal/2018 dated 24-07-2018** had held as below:

The Appellant in the instant case was free to refer students to Australian Catholic University (ACU) or any other University of its choice. Further the fee paid to the appellant was not tied to the promotional activities or expenses incurred to promote courses of ACU but as a percentage of fee paid by the students who got admitted to ACU – no consideration was paid in spite of incurring expenses by the Appellant for promoting activities of ACU, if no student joined ACU. The Appellant promotes the courses of the University, finds suitable prospective students to undertake the courses, and, in accordance with University procedures and requirements, recruits and assists in the recruitment of suitable students, and hence, the Appellant is to be considered as an intermediary in terms of Section 2(13) of the IGST Act.(emphasis supplied)

We are in conformity with the West Bengal Authority for Advance Ruling, that the services of the Appellant are not 'Export of Services' under the GST Act, and are eligible to tax.

The Appellate Authority for Advance Ruling in Five Star shipping (Maharashtra) at para 67 of its order in No.- **MAH/AAAR/SS-RJ/11/2018-19 Dated.- October 23, 2018 reported in 2018 (10) TMI 1517** – has stated as follows:

67. Thus, on perusal of the market/industry practices as mentioned above, it is prominently noticed that the appellant have made agreement keeping all the clauses related to the necessity or the requirement of the services being offered to the FSO similar to the practices observed in the vessels chartering industry, which include (a) the arrangement for the employment of the principals' ships/vessels by way of the study and analysis of the various market reports/trends and intelligence gathered from the other reliable data resulting into the short listing of the potential charterers; (b) facilitating the main supply of services i.e. the Renting of the water vessels with or without operator agreed between the FSO, the provider and their clients i.e. the vessels charterers by undertaking the activity in the form of monitoring of the voyage execution (c) undertaking various other administrative services like examination of lay



time calculation and reconciliation of the voyage related accounts for eventual settlement with the vessel charterers; which are the essential requirements for receiving the payment from the FSO. This brokerage or commission amount is a fixed percentage of the gross amount received from the charterers as consideration for this vessel chartering services. (emphasis supplied)

7. In view of the above, the appellant submits that the tests laid down in above cited Rulings answers to the question as to whether the consideration is received by the Appellants as a function of sale or independent of the sale. The latter is the case in the present appeal because irrespective of whether the sale is made or any takings are generated the entire cost of operations of the Appellant will be reimbursed with the mark up. There is no obligation to generate any sale and this is the most distinguishing feature vis a vis the other two AARs mentioned above. Further, no amounts are collected from the potential customer and on the contrary as stated in Para 2.3 and 2.4 of the agreement, the incentives are provided by the appellants on its own to promote sales.
8. **The appellant does not facilitate or undertakes any such arrangements to supply goods or services with respect to the subscribers in India**

It is submitted that the Marketing Agreement between the Appellant and Sabre APAC does not intend to operate so as to create a partnership or a joint-venture between the Appellant 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 require any facilitation or any similar arrangement with respect to the Subscribers in India viz travel agents, nor does the said Agreement create an obligation on the Appellant'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 which 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)."

In view of the above clause from the agreement it is clear that the appellants cannot describe themselves as agent or representative of Sabre Singapore but are to act only in its own capacity.

It is also a well settled law that the expression in the document that is construed cannot be ignored as held by the Hon'ble Andhra Pradesh HC in *G.S. Lamba & Sons v State of A.P 2012-TIOL-49-HC-AP-CT* under the following paragraphs.

33. The first principle is to construe the document as a whole. It is common in Courts that the scope of rights and obligations and limitations thereto created under a document are in issue. Unless a document is thoroughly scrutinized and read as a whole, it would not be possible to know the intention of the parties with regard to all these aspects.

34. The second principle is to understand the meaning of a document or a part of it from the document itself.

35. The third principle is to give literal meaning to the words used in a document.

36. The fourth principle is that in the event of the intrinsic incongruities and inconsistencies flowing from the words and language used in the document, "the intention would prevail over the words used."

9. The expression "by whatever name called" employed in the definition of "intermediary" has to be construed ejusdem generis and must fall within the genus viz. broker, agent, or any other person as held by the Hon'ble Supreme Court in *CIT, Udaipur Rajasthan vs McDowell & Co. Ltd Civil Appeal No: 2939 of 2006 SC* at Para 10.

10. Therefore, the appellant submits that Article 11 of the agreement quoted at para 1 of the order is completely ignored by the Ruling of the learned Authority and this strikes at the very basis of saying that the arrangement is that of broker or agent.

11. **No role in negotiating the terms of subscription.**

11.1 The appellant submits that the ownership of the software cannot be the basis to decide intermediary or otherwise. The test of intermediary has nothing to do with ownership of what is dealt with. The appellant submits that the unique feature of digital marketing as explained herein earlier is to carry on promotion and marketing activities without the ownership of the software. The ruling made on the grounds that the



appellants are not providing services on their own but on account of Sabre APAC merely because they do not own the software, is legally untenable in as much as the appellants have no role in negotiating the terms of subscription or conclude the same. This is evident from the submissions made before the Learned Authority which is enumerated in Para I of the order in appeal wherein it is established that with regard to the consultancy services, the appellant submits that they provide consultancy and provide information in relation to potential customers. Sabre APAC only undertakes the business analysis and decides as to whether to allot the Pseudo City Code or not. This is crucial to protect the equipment and the connectivity since the "KYC" norms are to be followed and risk protection measures against any potential harm to the system are identified even at the time of enrolling the customer. Further, with regard to Subscribers application, the appellant submits that the appellant does not participate in the acceptance or rejection of Subscribers application, however they only act as a communication channel as required by Sabre APAC. In this regard, Sabre APAC directly rejects or accepts the subscribers' application. Therefore, in view of the above it is clear that Sabre APAC has the sole discretion to accept or reject the potential customer and the appellants do not have any role to play and this aspect has been ignored by the learned authority in the impugned ruling.

12. The role of the Appellants is to popularise the brand.

12.1. The learned authority has erred in the observation that the customers on their own do not approach Sabre India but it is Sabre India that reaches out to them. This is factually incorrect in as much as the appellants only utilise the advertising and promotion techniques, use the provisions of service, support and promotion materials available and also participate in trade shows and sponsorship services for the purpose of promotion. This is directed at the entire body of potential prospects and not directed at any particular customer prospect. The appellant further submits that Sabre APAC involves in promotional activity which is totally on case to case basis. Therefore, appellant submits that Sabre India reaching out to the customers or the customers approaching Sabre India on their own does not alter the situation because the role of Sabre India is to popularise the brand. As mentioned earlier, Sabre APAC directly rejects or accepts the subscribers' application. Therefore, in view of the above it is clear that Sabre APAC has the sole discretion and the appellants do not have any



role to play and this fact has been ignored by the learned authority in the impugned ruling.

13. The role of the appellants is to popularise the brand which induces the customers to show interest.

13.1. The learned authority in the order, at para 5 sub para 6, has stated as follows.

Admittedly, the Appellant 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 APACs business in India.

13.2 The appellant submits that the learned authority has placed in the above observation that the sale promotion is the responsibility and include exhibitions etc. Quite contrary to the above position as observed at para 5 sub para 15: that "nowhere the agreement provides that the customers can come on their own to Sabre India". The order has erroneously concluded that the customers are unaware and they do not reach out to Sabre India. In this regard the appellant submits that they have been granted the non-exclusive right to market and promote CRS Software within the territory of India. Pursuant to the same the appellant identifies potential customer groups and demonstrates offerings etc. The appellant submits that the duties of Sabre India is only make use of any and all of the advertising and promotion techniques, the promotion materials and they participate in tradeshows and provide sponsorship services so as to promote the brand Sabre India. Therefore, by undertaking such promotional activity the appellants are popularising the brand and this induces the customers to show interest which is then pursued further.

14. The appellant does not act as a "link" between Sabre APAC and the subscribers

14.1. The learned authority has erroneously stated that the appellant acts as a link between the parties for the conduction of business. The appellant submits that the term "link" is defined as "a connecting element" as per the Merriam Webster Dictionary. The expression intermediary has been specifically defined and does not employ the



expression "link". within the terms of Section 2(13) of IGST Act. Also, there is nothing termed or defined as **Intermediary Services** but only that of an intermediary.

15. The ownership of the software cannot be the basis to decide intermediary or otherwise.

15.1. The other observation of the learned authority that Sabre India should not know how the software works to remain out of intermediary is clearly unsustainable because there cannot be any service on own account to the principal without the knowledge of the software. This is the unique feature of digital marketing where the marketer should be aware of the software and the equipment so that the customer is made aware of the product benefits to make an informed choice whether to go for the same or not.

15.2. To ascertain whether the services provided by the Appellant 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 Appellant as per the agreement entered into with Sabre APAC.

15.3. Further, it is relevant to note that Section 2(13) of CGST Act which defines Intermediary intends for participation of three parties, namely the supplier of goods or services, the recipient of goods or services and a facilitator. The Section 2(13) evidences the establishment of a link between all the three parties which is absent in the facts of the present case.

15.4. An intermediary in terms of Section 2(13) of the IGST Act is extracted as below:

"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.

15.5. According to the Webster's Encyclopedic Unabridged Dictionary of the English Language the term "arrange" means "to prepare or plan". Further the Black's Law Dictionary, 9th Edition defines the term facilitation as the act or an instance of aiding or helping. In the facts of the present case, the Appellant provides the services to



Sabre APAC on principal to principal basis with the only intention of promoting and marketing of CRS Software in India.

15.6. 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.

15.7. In this context, it is important to note the meaning 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.

15.8. 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."

15.9. The dictionary meanings extracted above, clearly indicate that, an element of 'representation' or '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 or 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.



15.10. 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.

15.11. 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.

16. No question of altering any service as the appellants service to the principal are independent of the supply by Sabre APAC to the customers

16.1. The appellant submits that the impugned order at para 5 under sub para 13 states 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 such intermediary cannot change the nature of supply as provided by the principal. The Marketing Agreement does not require any facilitation or any similar arrangement with respect to the Subscribers in India viz travel agents by the Appellant, nor does the said Agreement create an obligation on the Appellant's part to facilitate or arrange the supply of goods or services by Sabre APAC to the Subscribers. The Appellants service to the principal are independent of the supply by Sabre APAC to the customers travel agents in India and hence there is no question of altering such service in any way.

16.2 Accordingly, having regard to the analysis of definition of 'intermediary services' it can clearly be said the Appellant being a person who supplies such 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 Appellant would be covered under the exclusionary clause of the above definition.



Therefore, the conclusion of the Authority that the appellant is not providing services on their own account and thus held that the appellant is providing Intermediary services in the instant case is erroneous and is liable to be set aside.

17. There is no evidence to state that the customers prospects are identified by the appellants without any effect of the sales promotion

17.1. The learned Authority has observed at para 5 under sub para 15 that the customers come on their own to the Appellants. This is unsustainable inasmuch as the appellant utilises the advertising and promotion techniques, uses the provisions of service, support and promotion materials available and also participates in trade shows and sponsorship services for the purpose of promotion.

17.2. The appellant further submits that with regard to the consultancy services they provide consultancy and information services in relation to potential customers and therefore Sabre APAC only undertakes the business analysis and decides as to whether allot the Pseudo City Code or not. Therefore, the code allocation is by APAC and thus the learned authority has erroneously disregarded the results of the sales promotion undertaken by the Appellants. The customers come to the Appellants as a result and this is the purpose of advertising.

17.3. In view of the above, it is submitted that the impugned order affirming that nowhere the agreement provides that the customers can approach the appellants on their own, is erroneous in as much as the very purpose of sales promotion is to get customers interested. The services are provided to the general public and interested persons are then pursued. This is with the aim to make CRS software the reservation system of choice for the subscribers and to strengthen the subscribers trust in the brand so as to augment Sabre APACs business in India. The appellant further submits that the role of Sabre India is to popularise the brand as mentioned earlier, Sabre APAC directly rejects or accepts the subscribers' application.

18. There can be no service on own account to the principal without the knowledge of the software.

18.1. The learned authority has further held that the appellant is ought to be unaware of the functions and operations of the software for their activity to stand outside the ambit of intermediary. The observation made by the learned authority is



unsustainable in as much as the service provided by the appellant to the principal cannot be on its own account without the knowledge of software. Therefore, on this ground also, the impugned ruling is liable to be set aside.

18.2. It is submitted that the Marketing Agreement dated 31 October 2016 between the Appellant 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 Appellant 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 Appellant to provide marketing services to Sabre APAC with respect to the CRS Software belonging to Sabre GBL Inc. within the territory of India.

18.3. No clause of the Marketing Agreement between the Appellant and Sabre APAC, mentions the rendering of facilitation or arrangement of services by the Appellant 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 Appellant and the Subscriber, namely, travel agent in India whereby the Appellant is under any obligation or duty owed to the Subscriber in terms of the arrangement with the Sabre APAC under the Marketing Agreement. No moneys are collected by the Appellants from any one for any service rendered except on a costplus arrangement from Sabre APAC.

18.4. Hence, the Appellant 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 Appellant provides marketing, promotion and distribution services in relation to the CRS Software only to Sabre APAC and not to any other party.

Reference in this regard is made to the Advance Ruling in case of *In Re Godaddy India Web Services Pvt Ltd [2016 (46) STR 806 (AAR)]* wherein while deciding on whether the Appellant would qualify as an intermediary, the Hon'ble Authority for Advance Ruling held that:

"10. The definition of intermediary as envisaged under Rule 2(f) of POPS does not include a person who provides the main service on his own account. In the present case, Appellant is providing main service, i.e., business support services to WWD US and on his own account. Therefore, Appellant is not an 'intermediary' and the service provided



by him is not intermediary service. Further, during arguments, Appellant drew our attention to one of the illustration given under Paragraph 5.9.6 of the Education Guide, 2012 issued by C.B.E. & C. Relevant portion is extracted as under;

Similarly, persons such as call centers, 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.

Appellant relying on above paragraph submitted that call centers, by dealing with customers of their clients, on client's behalf, are providing service to their client on their own account. Similarly, Appellant is providing business support service such as marketing and other allied services like oversight of quality of third party customer care centre operated in India and payment processing services, on behalf of GoDaddy US. Therefore, these services provided by the Appellant to GoDaddy US cannot be categorized as intermediary or services, as intermediary service."

The views expressed by the rulings of AAR have great persuasive value as held by this Hon'ble Tribunal in *The Bombay Flying Club vs Commr of Service Tax Mumbai-II 2012 TIOL 841 CESTAT Mum* at para 5.9 and the Hon'ble Supreme Court in *Columbia Sportswear Co vs Director of Income Tax, Bangalore 2012 (383) ELT 321 (SC)* at Para 9.

18.5. Similarly, reference is made to the decision of the Authority of Advance Ruling in the case of Re :*Universal Services India Pt Ltd [2016 (42) STR 5855 (AAR)]*. In this case the service provider providing the payment processing facilities to a domain service provider was held not to be a provider of "intermediary service" within Rule 2(f) of the Place of Provisions of Service Rules 2012, as the service provided by him was on his own account and remuneration entitled to him was payable by the domain service provider alone and no remuneration of any kind was obtained from any of the customers of the domain service providers.

18.6. In view of the above, the finding of the Authority that the appellants are facilitating service between travel agents and Sabre Singapore cannot render them as intermediary. The question of altering the nature of value of service can apply only when the appellant qualifies as an agent and not otherwise.

18.7. In the light of the above detailed analysis and discussions, it is submitted that the services provided by the Appellant are only in the nature of marketing, promotion and



distribution activities. As stated earlier with reference to Educational guide as referred to in GoDaddy (supra) above the fact that the Appellants would interact with the Travel agents cannot take away the relationship with Sabre APAC from that of a principal to principal basis and bring them within the scope of intermediary.

18.8. Further, there is no privity of contract between the Appellant and the customers of Sabre APAC and the customers or are in no way connected with the services supplied by the Appellant 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 Appellant cannot be characterized as intermediary services.

18.9. The Impugned order is consequently flawed to the extent that it observes that the appellant is not providing services on their own and that the software belongs to the parent company and thus the appellant educates the subscriber about the software which they would not have known if the appellant was not present as an intermediary between them and the owner of CRS Software. This is contrary to the facts on record.

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

- i) Services provided by the Appellant 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.
- ii) In any case, the Appellant does not arrange or facilitate any supply of goods or services *inter alia* due to the following reasons:
 - The Appellant 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 Appellant 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 appellant'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 Appellant are not the sole basis upon which Sabre APAC would accept or reject the orders received from customers. The same 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 Appellant 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 Appellant 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 Appellant 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.

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

19.1. The Appellant submits that the main service of the Appellant 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 Appellant merely identifies potential clients and only on acceptance of the same by Sabre APAC does the Appellant 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 Appellant provides marketing, promotion and distribution services only to Sabre APAC and not to any other party. Thus, all the services provided by the Appellant accrues outside India to Sabre APAC. There is no remuneration, fee or any other consideration received by the Appellant from anyone in India including the Subscriber namely travel agents in connection with the marketing activities under the Agreement.

19.2. It is submitted that in the facts and circumstances of the present case, in the impugned findings that the supply of the Sabre India to Sabre APAC is intermediary in nature and thus is not on their own and hence concluding that the said intermediary services cannot be treated as export of services under the provisions of GST laws is completely erroneous and unsustainable. In view of the facts, the Appellant submits that the various services rendered by them to Sabre APAC would remain excluded from the Central Goods & Services Tax Act 2017 and the Maharashtra Goods & Services Tax Act 2017 (hereinafter referred to as "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:

19.3. 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.

19.4. It is submitted under the provisions of the GST Acts, all events such as manufacture, sale or provision of service, have been subsumed under the single umbrella of supply as prescribed under Section 7 of the CGST Act. 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.

19.5. 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 Appellant 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.

19.6. The Appellant submits that the findings of the Authority are based on fundamental misunderstandings of vital facts and fundamental mis-appreciation or misapplication of the relevant law and therefore the Impugned Order is bad in law, arbitrary, legally unsustainable, deserves to be set aside. In this context, the Hon'ble Supreme Court in *Micro Hotel P.Ltd vs Hotel Torrento Ltd.*, [(2012) 10 SCC 290] declared the law as follows:

"Wrong appreciation of facts leads to wrong reasoning and wrong conclusions and justice will be casualty. Deciding the disputes involves, according to Dias on Jurisprudence, knowing the facts, knowing the law applicable to those facts and knowing the just way of applying the law to them, if any of the above mentioned ingredient is not satisfied, one gets a wrong verdict."

19.7. Further the observation in the Impugned order is that the appellant being the supplier of service located in India and the recipient of Service i.e., the supplier of goods located outside India, application of Section 13(8) (b) of the said Act, as per which the place of intermediary services shall be the location of the supplier of services is erroneous and flawed. In this regard the Appellant submits that 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 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)

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.

19.8. The Authority has failed to appreciate the nature of services provided by the Appellant which is necessary to ascertain the place of supply of service, which in turn would equip the Appellant to determine whether the supply of Appellant to Sabre APAC would qualify as an export of service under Section 2(6) of IGST Act and subsequently the tax liability on the supply of Appellant.

19.9. In view of the above, the Appellant submits that a taxable service provided by a person in India would be subject to tax only when the service is/ 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, the 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:

“(6) 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."

19.10. 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 Appellant is a service provider located in India and all its distinct branches are located within the territory of India as well. Further, the Appellant 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 Appellant has a contractual obligation to provide services to Sabre APAC located at Abacus Plaza, 3 Tampines Central 1, Abacus 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;

iii) The place of supply of services is outside India: the services are provided by the Appellant 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.

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. The Appellant charges a fee on a cost plus markup basis in US Dollars which the Appellant is entitled to irrespective of the number of booking made on the said CRS Software by the Subscribers viz. travel agent.

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 Appellant is located in India and Sabre APAC is located outside India. Thus, the Appellant 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.

19.11. The Appellant satisfies the conditions (i), (ii), (iv) and (v) prescribed above as the supplier of service i.e the Appellant is located in India, the recipient of service i.e., the Sabre APAC is located outside India, payment of supply of the Appellant's service is received in convertible foreign exchange and supplier of service and recipient of service are not merely the establishment of a distinct persons in accordance with Explanation 1 in Section 8 of the IGST Act. The appellant also satisfies condition (iii) above as the place of supply of Sabre India is outside India in terms of discussion as below:

- i. The services supplied by the Appellant will qualify under Section 13(2) of IGST Act.

The place of supply of service provided by Appellant to Sabre APAC located at Singapore shall be the 'location of recipient of service' in terms of Section 13(2) of the IGST Act (the default rule) as a supply of services by the Appellant does not qualify in the specific place of supply rules prescribed under Section 13 of IGST Act. Therefore, the services such as marketing, promotion and distribution services in relation to CRS software is supplied by the Appellant in India to Sabre APAC located in Singapore which is outside India, the place of supply of service will be the location of Sabre APAC located outside India.

- ii. The services supplied by the Appellant does not qualify under Section 13(8)(b) of the IGST Act.

Section 13(8)(b) of the IGST Act would apply on supply of services which qualifies as intermediary service. An intermediary service in terms of Section 2(13) of IGST Act is extracted as below:

"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.

When the appellant is supplying services such as marketing, promotion and distribution services in relation to CRS software to Sabre APAC, it is single supply of service and hence the activities are performed on principal to principal basis to and for Sabre APAC and would not qualify as intermediary service in terms of Section 2(13) of IGST Act. Given this, the place of supply of services by appellant will not be determined in terms of Section 13(8)(b) of IGST Act which provides the 'location of supplier of service' as the place of supply. Resultantly the place of supply of service will not be the location of the Appellant in India.

19.12. Therefore, in view of the facts and the provisions of law as applicable in the present case, the Appellant 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 Appellant is entitled to claim the benefit of zero-rated supplies as prescribed under Section 16 of the IGST Act. The Impugned Order has failed to



appreciate and factor this aspect in its findings, thereby rendering the impugned findings unsustainable and hence it becomes necessary to decide and adjudicate the place of supply in terms of Section 13 of IGST Act so as to conclude that the supply of service by Appellant would qualify as an export of service.

19.13. Since, exports are considered to be "zero rated supplies" according to Section 16(1) of IGST Act qualification of supply of services by Appellant as export of service would have direct impact on the taxability of the supply of service. Non consideration of the submissions made relating to the activities performed and also the legal aspects thereto has caused grave hardship to the Appellant.

20. THE SERVICES RENDERED BY THE APPELLANT IS CLASSIFIABLE AS A COMPOSITE SUPPLY AS PER THE TERMS OF SECTION 2(30) OF THE CGST ACT:

20.1. It is submitted that under the Marketing Agreement dated 31 October 2016 with the Sabre APAC, the Appellant 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.

20.2. All the services rendered by the Appellant 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 Appellant are supplementary to the main supply of marketing and promotion services provided to Sabre APAC.

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

"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 supply”.

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

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

20.5. 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 Appellant 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 Appellant under the Marketing Agreement.

20.6. Further, such services are not peculiar to the Appellant'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 Appellant issues a single consolidated monthly invoice on a costplus 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'.

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



Personal Hearing

21. A personal Hearing in the matter was conducted on 28.03.2019, wherein Shri S. Thirumalai Advocate, representative of the Appellant, as well as Shree Durgesh Salwe, Asstt. Commissioner, appearing as jurisdictional officer, reiterated their written submissions.

Discussion and Findings

22. Heard both the parties and have also gone through the facts of the case and written submissions made by the Appellant as well as by the Jurisdictional officer. On perusal of the entire case records, placed before us, the moot issue is, whether the entire gamut of services, being provided by the Appellant to Sabre APAC, their parent company located in Singapore, can be construed as composite supply wherein the principal supply is the supply of intermediary service, or otherwise.
23. To decide this, we will first discuss the nature of all the services, provided by the Appellant to their parent company, namely, Sabre APAC. To accomplish this, we refer to the Marketing Agreement dated 31.10.2016, entered between the Appellant and their parent company, namely, Sabre APAC, wherein as per the provisions of Article 3 of the above said Agreement, the Appellant have agreed to undertake the following activities, either as principal, in its own name, or on behalf of Sabre APAC, in the Licensed Territory i.e. India:
- (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.

On perusal of the above cited Article of the said Agreement, which deals with the bucket of the activities, being undertaken by the Appellant, it is amply evident that all the marketing and promotional activities, viz.- advertising, PR, Sponsorships, any special events and trade shows etc. are solely aimed to create the customer base for Sabre APAC, the Appellant's parent company, to augment its business in India, by way



of identifying the potential subscribers of Sabre System and thereby enhancing business opportunities for Sabre APAC, the Appellant's parent company. This observation is also substantiated by the facts of the case, explicated by the Appellant in the Appeal filed by them, in para G above, wherein they asserted that *they also undertake 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.*

24. The Appellant, vide para F above, further submitted that they intend to undertake the following activities in relation to the marketing and promotional 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 Appellant 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 Appellant 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 Appellant logs on a request into the system through the website maintained by Sabre APAC called Subscriber Communication Management System ("SCMS"). This is an automated process wherein a request is placed by the Appellant to create a Pseudo City Code, which is a system designation which allows tracking activity of the subscriber in the CRS Software;
- 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 Appellant'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 Appellant undertakes reporting of the results in the SCMS 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 Appellant which is submitted in the SCMS system in the form of a non-binding request.

Herein, the responsibility of the Appellant, 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 upon Sabre APAC deciding to accept the potential customer based on the analysis provided by the Appellant.

25. Thus, on perusal of the above submissions made by the Appellant, it is evident that the prime responsibility of the Appellant is to identify the potential subscribers viz.-travel agents across the country, for the Sabre System, wherein the sales team of the Appellant approaches the potential subscribers to explain the remarkable features, functionality and specialty of the Sabre System and based upon the response from the potential subscribers, the Appellant initiates the subscription process of the Sabre System for the potential customers by placing a request for subscription in respect of the Sabre System, in the favor of potential subscribers in the website, called Subscriber Communication Management System ("SCMS"), maintained by Sabre APAC. The Appellant, themselves, have submitted above that the scouting of potential subscribers and the said organizational and workflow analysis of such potential subscribers are the deliverables by the Appellant which is submitted in the SCMS system in the form of a non-binding request. From the above, it is very much clear that by carrying out all the activities as per the said Agreement, Appellant is arranging for the supply of services, which, in the instant case, is online information and database access and retrieval services (OIDAR Services) provided by Sabre APAC, by way of identifying the potential subscribers.



26. It is further submitted by the Appellant that *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 upon Sabre APAC deciding to accept the potential customer based on the analysis provided by the Appellant.* Thus, on perusal of this very submission of the Appellant, it is adequately clear that the Appellant is facilitating the supply of the 'online information and database access and retrieval services'(OIDAR Services), which is provided by Sabre APAC, their parent company to the potential subscribers, which are eventually identified by the Appellant as described and submitted above by the Appellant themselves, as the activities of installation of interfaces to the CRS Software, consultancy, assistance, provision of information services, etc., entrusted upon the Appellant by Sabre APAC, are the essential and indispensable elements of the above mentioned OIDAR Services, which are actually performed by the Appellant on behalf of Sabre APAC, their parent company. To understand the significance of the role of the Appellant, if we take out the activities carried out by the Appellant, from the chain representing the supply of OIDAR services provided by Sabre APAC to the Subscribers of its Sabre System, we will witness that there is no provision of this OIDAR Services at all. Thus, it is abundantly clear that the Appellant is arranging as well as facilitating the supply of services between Sabre APAC and the potential subscribers.

27. Now to determine as to whether the above discussed activities of the Appellant are in the nature of the intermediary or not, we will first discuss the meaning of intermediary as provided in the Section 2(13) of the IGST Act, 2017, which is reproduced herein under:

"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.

Thus, for anyone, seeking to be qualified as an intermediary, the following conditions are required to be satisfied:

- (i) He should be a broker, an agent or any other person, by whatever name called;



- (ii) He arranges or facilitates the supply of goods or services or both, or securities, between two or more persons; and
- (iii) He should not supply such goods or services or both or securities on his own account.

28. Now coming to the condition (i) above, we will first discuss the meaning of broker, or agent. It is observed that 'broker' is not separately defined in the GST Act. However, the meaning of 'Agent' is provided in Section 2(5) of the CGST Act, 2017 and is being reproduced herewith for ease of reference:

(5) "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Thus, a person will be considered as an agent if he carries on the business of supply or receipt of goods or services or both on behalf of another. Now, by applying this proposition in the instant case, it is revealed that the Appellant is carrying on the business of supply of services, in this case OIDAR Services, which is actually provided by Sabre APAC, their parent company, by performing the activities of 'identification of potential subscribers' and initiating the process of subscription with respect to the Sabre System i.e. CRS Software, by logging request on the Sabre APAC website and by providing the outcome of the organisational and work flow analysis as well as background check of their credentials and prior activities of the potential subscribers, on behalf of Sabre APAC, another person/entity. Thus, Sabre APAC takes the decision of the providing subscription to these potential subscribers on the basis of the abovementioned reports, which are prepared and uploaded by the Appellant on SCMS (Subscribers Communication Management System), owned by Sabre APAC. Thus, it is established that the Appellant play a key role in the supply of the OIDAR Services to the subscribers of the Sabre System, on behalf of another person, in the present case Sabre APAC and thus acting as an "agent" in the present case. If we take out the role played by the Appellant in this entire transactional chain, there would be no supply of any services at all, as there would not be any recipient of the



OIDAR services in India, for it is the Appellant who identifies and thus arranges for the recipient of this OIDAR Services provided by Sabre APAC.

29. Now coming to the condition no. (ii) mentioned above in para 27, it has been established in para 25 and 26 above that the Appellant is arranging as well as facilitating the supply of services viz.- OIDAR Services between the two persons, i.e. Sabre APAC, the OIDAR service provider and another is the Sabre System Subscriber, the OIDAR service recipient.
30. Further, coming to the condition no. (iii) mentioned above in para 27, we observe that the Appellant is not providing the main service, in the present case OIDAR Services, on their own account as the said OIDAR service is provided by Sabre APAC, which is holding the exclusive right over the Sabre System.
31. Thus, it is established beyond doubt that the activities undertaken by the Appellant are primarily in the nature of those of the intermediary.
32. As regards the Appellant contention that the use of technology and hardware connectivity are the crucial elements for any interaction with the principal and the use of digital infrastructure cannot ipso facto mean that the activity is as a broker or agent and cannot be regarded as facilitating the service, it is opined that Appellant is not held as intermediary because of the use of the technology and hardware connectivity and other digital infrastructure, for any interaction with the principal, rather they are established as intermediary because of the activities undertaken by them, which are in nature of facilitation of the supply of services in this case the OIDAR service, between the Service Provider i.e. Sabre APAC and the service recipient i.e. subscriber of the Sabre System located in India. Thus, this contention made by the Appellant is clearly not tenable.
33. Further, the Appellant have contended that the relationship between the appellant and Sabre APAC is on principal to principal basis as laid out in the Article 11 of the said Agreement dated 31.10.2016. They have also cited the Ruling *01/WBAAAR/Appeal/2018 dated 24-07-2018* and *MAH/AAAR/SS-RJ/11/2018-19 Dated October 23, 2018* to corroborate their argument.

So far as the Ruling pronounced by the West Bengal AAAR is concerned, we are of the opinion that we are not bound by the observation by Hon'ble Members of the W.B.



AAAR. Further, as regards the Ruling pronounced by the Maharashtra AAAR, it is observed that facts of the present case are not congruent to the facts of the case involved in the cited AAAR Ruling and hence the said ruling is not applicable in the instant case.

34. As regards the Appellant contention that they do not facilitate or undertakes any such arrangements to supply goods or services with respect to the subscribers in India referring to the provision made in Article 11 of the said Agreement which says that *"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)"*, it is observed that they have intentionally entered into such agreement to escape from the Principal – Agent relationship and thereby refraining from the liability to pay service tax or GST, as the case may be. However, the nature of the activities entrusted on the Appellant clearly indicates that the Appellant is acting as intermediary in this transactional arrangement.

Further, as regards the High Court Judgement in the matter of *G.S. Lamba & Sons v State of A.P.(2012-TIOL-49-HC-AP-CT)* cited by the Appellant to strengthen their contention in as much as the document that is construed cannot be ignored, thus giving prominence to the Article 11 of the said Agreement, which clearly intends to blot out the situation of the Principal – Agency relationship between the Appellant and Sabre APAC, it is seen that Hon'ble High Court has, inter alia, clearly distinguished that *in the event of the intrinsic incongruities and inconsistencies flowing from the words and language used in the document, "the intention would prevail over the words used."* Thus, our observation that the Appellant's activities is in the nature of intermediary based on the intrinsic intention and spirit of the said Agreement, is in coherence with the above High Court Ruling. Thus, the above contention is devoid of any merit and substance and hence not tenable.



35. As regards the Appellant's contention wherein they have stressed upon application of the interpretational rule of ejusdem generis, which was adopted in one of the Apex Court Rulings in the case of **CIT, Udaipur Rajasthan vs McDowell & Co. Ltd Civil Appeal No: 2939 of 2006**, it is asserted that while interpreting the meaning of the intermediary provided in the Section 2(13) of the IGST Act, 2017, we have adopted the above mentioned interpretational rule of ejusdem generis only. And based upon the said construction of ejusdem generis, we have arrived on the conclusion that the activities of the Appellant are primarily in the nature of those of intermediary.
36. The expression "by whatever name called" employed in the definition of "intermediary" has to be construed ejusdem generis and must fall within the genus viz. broker, agent, or any other person as held by the Hon'ble Supreme Court in **CIT, Udaipur Rajasthan vs McDowell & Co. Ltd Civil Appeal No: 2939 of 2006**.
37. Appellant, in support of their claim of, not being intermediary, have also placed reliance on the Advance Ruling in case of **In Re Godaddy India Web Services Pvt Ltd [2016 (46) STR 806 (AAR)]**. As regards the above cited Advance Ruling, it is opined that the said ruling does not have any implication in the instant case as the facts of the present case is different from the facts of the case, cited by the Appellant.
38. As regards the Appellant's reference to the decision of the Authority of Advance Ruling in the case of **Re : Universal Services India Pt Ltd [2016 (42) STR 5855 (AAR)]**, wherein the service provider providing the payment processing facilities to a domain service provider was held not to be a provider of "intermediary service" within Rule 2(f) of the Place of Provisions of Service Rules 2012, as the service provided by him was on his own account and remuneration entitled to him was payable by the domain service provider alone and no remuneration of any kind was obtained from any of the customers of the domain service providers, it is observed that the facts of above cited case is different from the present case, as in the above cited case, the service provider was providing payment processing facilities to a domain service provider, thereby not playing any role in the supply of the main service, provided by the domain service provider to their recipient, while in the instant case, the Appellant plays a very critical role in the supply of service, namely **OIDAR Service**, between **Sabre APAC** and the **Sabre System Subscribers**.



39. As regards the Appellant's contention wherein they argued that they play 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, it is opined that as per the meaning of the intermediary envisaged in Section 2(13) of the IGST Act, 2017, there is no requirement of any role to be played by the intermediary in the contract/Agreement entered between the Service provider and the Service recipient. Thus, this contention is devoid of any merit and accordingly is not considered.
40. As regards the Appellant's contention wherein they argued that consideration for the service rendered is based on costs incurred by the Appellant 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, which evidences that the Appellant 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, it is opined that as per the meaning of the intermediary envisaged in Section 2(13) of the IGST Act, 2017, there is no fixed mechanism of charging fee or consideration by the intermediary from the person to whom they provide intermediary services. Thus, this contention is devoid of any merit or rationale and accordingly is not considered.
41. As regards the Appellant's contention that the services rendered by Sabre India to Sabre APAC qualify for exclusion under the said acts as an export of service, it is stated that for deciding any supply of services as export of services, in terms of the provision of Section 2(6) of the IGST Act, 2017, which prescribes the conditions for qualification of any service to be an export of service, place of supply of service has to be determined. However, on perusal of the provisions related to the set of questions qualified to sought for the Advance Ruling as laid out in Section 97(2) of the CGST Act, 2017, it is seen that question regarding the determination of the supply of goods or services or both is not mentioned in the above said provision. Section 97(2) of the IGST Act, 2017 is reproduced herein below for ease of reference:
- (a) Classification of any goods or services or both under the Act;



- (b) Applicability of a notification issued under the provisions of the Act;
- (c) Determination of time and value of the goods or service or both;
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) Determination of the liability to pay tax on any goods or services or both;
- (f) Whether the Appellant is required to be registered under GST;
- (g) Whether any particular thing done by the Appellant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Thus, from the above, it is apparent that we do not have jurisdiction to decide whether any particular supply of service is export or otherwise. However, the Advance Ruling Authority has commented on the place of the supply of service, transcending their jurisdiction. Hence, we differ with the ruling given by the Advance Ruling Authority on account of our abovementioned findings.

42. As regards the Appellant's contention regarding the entire gamut of activities carried out by the Appellant eligible to be classified as a composite supply in terms of section 2(30) of the CGST Act, we agree to the Appellant's contention to the extent that the entire spectrum of the activities undertaken by the Appellant can be considered as Composite supply in term of the provision of Section 2(30) of the CGST Act, 2017, as all the activities of the Appellant are carried out in conjunction with each other and can be naturally bundled in the ordinary course of business as all the activities performed viz.-advertising, PR, promotional activities, Sponsorship, Trade shows, demonstrating offerings etc. by the Appellant are intended to identify the potential subscriber of the Sabre System. However, the principal activity of the Appellant is that of the intermediary as discussed and established above and all these mentioned activities i.e. advertising, PR, promotional activities, Sponsorship, Trade shows, demonstrating offerings etc. can either be considered either as ancillary or incidental to the principal service, which in the present case is intermediary service. Hence, it is established that the entire activities undertaken by the Appellant can be considered as composite supply, of which the principal supply is that of intermediary.
43. In view of the above findings, we modify the rulings pronounced by the Advance Ruling Authority to the extent of the above findings and pass the following order.



ORDER

We hold that the entire gamut of activities of the Appellant is in the nature of the composite supply, of which intermediary services is the principal supply. Further, as regards the services provided by the Appellant to their Client, namely Sabre APAC is export or otherwise, we hold that we do not have jurisdiction to decide the place of supply of service, which is one of the pre requisites to determine the export of services in terms of Section 2(6) of the IGST Act, 2017 and hence we cannot pass any ruling in respect of the same.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

- Copy to-
1. The Appellant
 2. The AAR, Maharashtra
 3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
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