

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/22/2018-19 **Date- 26.02.2019**

BEFORE THE BENCH OF

- (1) Smt. Sungita Sharma, MEMBER**
(2) Shri.Rajiv Jalota, MEMBER

GSTIN Number	27AAGCV2195L1ZS
Legal Name of Appellant	Vservglobal Private Limited
Registered Address	502, Brahans Business Park, near Paper Box, Mahal Industrial Area, Off Mahakali Caves Road, Andheri (E), Mumbai- 400 093
Details of appeal	Appeal No. MAH/GST-AAAR-22/2018-19 dated 28.11.2018 against Advance Ruling No. GST-ARA-03/2017-18/B-59 dated 07.07.2018
Jurisdictional Officer	State Tax Officer, MUM-VAT-C-713, Nodal Division -7

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 Vservglobal Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-03/2017-18/B-59 dated 07.07.2018.



BRIEF FACTS OF THE CASE

- A. The Appellant M/s. Vservglobal Private Limited (hereinafter referred to as 'Appellant'), is an Indian Company having its office at Mumbai. The company is incorporated to provide back office support services to overseas companies (hereinafter referred to as 'Clients'). On 30th December, 2017 Appellant entered into an agreement with M/s. Vikudha Overseas Corporation Ltd., Hongkong (hereinafter referred to as 'Client') to provide back office administrative and accounting support.
- B. Client is engaged in Trading of Chemicals and other products in International Trade. The Client either itself or through some other companies identifies potential buyers / suppliers and negotiate with them. The Appellant have no role until the Purchase /sale order is finalized by the client. The Appellant comes into picture only after finalization of Purchase / Sale order by a Client to provide back office support.
- C. The Appellant approached Hon'ble Authority for Advance Ruling to decide as to whether the aforesaid services rendered qualify as 'Zero Rated Supply' in terms of Section 16 of the Integrated Goods & Service Tax Act, 2017, as understood by the Appellant.
- D. Personal hearing was held on 26th June, 2017, wherein a question was raised as to how the services are not 'intermediary services' in terms of Section 2(13) of the IGST Act, 2017 and the appellant was allowed to file written submission on it within a week's time. Accordingly, written submissions were filed on 02.07.2018.
- E. The Comments of the Concerned officer were received by the Appellant, who inter-alia stated as under:
- As per the website of M/s. Vikudha Overseas Corporation Ltd. Hongkong, the company is operating worldwide including India.
 - A Company named M/s Vikudha India is devoted for sourcing from India and subcontinent.
 - There are common Directors in Vikudha Overseas and Vikudha India.
 - The office of Vikudha India is situated in the same building wherein the office of the Appellant is situated.
 - On the basis of above, the concerned officer came to the conclusion that the Appellant is actually providing services to Vikudha India.



- f. The Concerned Officer also found that the Appellant was not receiving its consideration in convertible foreign exchange.
- F. The Appellant filed rejoinder on 6th September 2018, a copy of which is annexed with the appeal. The Appellant, interalia, submitted as under.
- a. M/s. Vikudha Overseas Corporation, Hong Kong have 19 countries and name of group company engaged in sourcing / marketing in that country / region is clearly mentioned on its website. Similarly, M/s. Vikudha India Trading Ltd. is sourcing from Indian subcontinent.
 - b. The Appellant comes into picture only after finalization of purchase / sale order by the client and provide back office support. But in trading business, there are many other activities involved such as evaluation of prospective buyers / sellers, negotiations, quality check etc. The said group companies assist the client in these activities and the appellant have no role in it.
 - c. The Appellant provide back office support in respect of all the business undertaken by the Client with the help of these group companies. It is not like that the appellant's support is limited to business transacted through M/s. Vikudha India Trading Limited or business conducted in India. For example, a set of shipping documents like Invoice, Packing list etc. prepared by the Appellant in respect of a consignment purchased from South Korea and sold in Tanzania were annexed with the said rejoinder.
 - d. In its comments, the concerned officer had claimed that the Appellant was not receiving consideration in convertible foreign exchange. To show that the Appellant was receiving consideration in convertible foreign exchange, copies of Invoice issued, Telegraphic transfer, FIRC, bank statement are annexed herewith.
- G. The Hon'ble Authority for Advance Ruling in the impugned Ruling found that the activities undertaken indicate the Appellant as a person who arranges or facilitates supply of goods or services or both between the overseas client and customers of the overseas client, and therefore covered under the definition of 'Intermediary' as contained under IGST Act and therefore, the place of supply of services is the location of Appellant which is in India. On this basis, the Hon'ble Authority ruled that the services being provided by Appellant are not 'Zero Rated Supply'. Feeling aggrieved, hence the instant Appeal.



GROUND OF APPEAL

1. The Appellant submits that the Ld. Advance Ruling Authority have committed grave error in Ruling that the services provided by Appellant are covered under the definition of 'Intermediary' as contained in Section 2(13) of the Integrated Goods & Service Tax Act, 2017, which read as under:

"(13) "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;"

2. A person is covered under the aforesaid definition of 'intermediary' if following three conditions are satisfied.
 - a. He must be a **'broker'** or an **'agent'** or **'any other person by whatever name called, who arranges or facilitates the supply of goods or services or both or securities'**.
 - b. The supply arranged or facilitated must be between two or more persons.
 - c. He should not be the person who supplies the goods or services or securities on his own account.
3. There can be no scope for confusion when the person either acting as an agent of the supplier or acting as an agent of the recipient, arranges the supply or acting as a broker between a supplier and recipient, finalizes some sale or purchase deal and in these circumstances, the person who arranges the supply or brokers a sale/purchase deal between two or more persons would be an intermediary.
4. But the definition of "intermediary" also covers **'any person by whatever name called'** who facilitate the supply of goods or services or both or securities between two or more persons. Now the question is what is the scope of 'facilitation' and whether a person engaged only in the back office administrative and accounting support activity for his client after the finalization of sale/ purchase deal and who had no role whatsoever in finalization of sale/purchase deal on behalf of his client, be also covered by the definition of "intermediary".
5. The answer to this question would be in the negative, as in accordance with the principle of *"noscitur a sociis"*, the expression - 'any other person...who arranges or facilitates the supply of goods or services or both or securities....' would get its colour



from the associated terms - 'broker' or 'agent' and, therefore, this expression would cover only those persons whose activity is akin to the activity of brokers or agents which results in or may result in finalization of some sale/purchase deal on behalf of the client.

6. The Rule of construction 'noscitur a sociis' as explained by Macmillan means, "The meaning of a word is to be judged by the company it keeps". Gajendragadkar, J. explained the scope of the rule in *State v. Hospital Mazdoor Sabha* (1960-2 S.C.R. 866) in the following words:

"This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vol. XIV, p. 207) : "Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscitur a sociis". The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined words correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear then the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the Legislature in using wider words is clear



and free of ambiguity, the rule of construction in question cannot be pressed into service."

7. As per the rule of 'ejusdem generis' when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. Hon'ble Supreme Court explained the ambit and scope of this rule in Amar Chandra Vs. Collector of Excise, Tripura, AIR 1972 SC 1863, in the following words.

"The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent."

8. In Law Lexicon by P Ramnath Ayer, Second Edition, page 245, the term 'broker' has been defined as, *"A middleman or agent who, for a commission on the value of the transaction, negotiates for others the purchase or sale of stocks, bonds, commodities, or property of any kind, or who attends to the doing of something for another."* Similarly, in Baring Vs. Corrie, (1818) 2 Barn. & Ald. 137, *"A broker is an agent employed to negotiate and make contracts on behalf of his principle, and in general, contracts of purchase and sale."*
9. The term 'agent' has been defined in Section 2(5) of the Central Goods & Service Tax Act, 2017 in the following words.

"(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;"

10. Thus, as per above and in commercial understanding the terms 'broker' and 'agent' means someone who negotiates and /or assist in broking a contract for supply of goods and / or services between two or more persons. Therefore, as per the Rules of 'noscitur a sociis' and 'ejusdem generis', the term ***'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,' should also be construed to mean a person who provides services in broking a deal of supply between two or more persons.

11. It is correct that the Rules of 'noscitur a sociis' and 'ejusdem generis', have no application if otherwise intention of legislature to give wider meaning is clearly manifested and un-ambiguous. Facilitating supply of goods or services is a very wide term. Entire Trade, Commerce and Industry is engaged in supply of goods and / or services and host of services facilitates the same. For example, telecommunication services facilitate contact between two or more persons. Transportation services facilitate delivery of goods. Exhibition halls facilitate to reach the potential buyers. Banking facilitates transfer of money etc. All these services, in one way or other, facilitate supply of goods and /or services and therefore all such services should fall under 'intermediary' services and all the independent provisions incorporated for determination of place of supply in such services would be rendered redundant. They argued that the courts should avoid a construction which renders a part of statute devoid of any meaning. Kind attention is invited to the judgment of Hon'ble Supreme Court in J K. Cotton Mills Vs. State of U. P., AIR 1961 SC 1170 wherein the Hon'ble Supreme Court stated,

"In applying the rule however we have to remember that to harmonies is not to destroy. In the interpretation of statues, the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statue should have effect. These presumptions will have to be made in the case of rulemaking authority also."

12. In the instant case, it is undisputed that the client of the appellant is situated outside India whose majority of business has no connection with India as it purchases goods from outside India and sell also to its customers situated outside India. The appellant provides back office administrative and accounting support in the said business. Such activities are Export of services, not only brining employment opportunities but also precious foreign exchange. Taxing such an activity is nothing more than Exporting Taxes. The foreign cos. are outsourcing such activities to Indian Entities as a measure of cost cutting. Such Indian Cos. providing back office support would not be able to compete with their counterparts in neighboring countries if GST @ 18% is imposed.



13. If the language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences resulting from adopting the alternative construction. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such result. Kind attention is invited to the judgment of Hon'ble Madhya Pradesh High Court in BrijGopal Vs. State of M. P., 1978 MPLJ 70, wherein the Hon'ble High Court held as under.

"It is a well-settled principle of construction of the Constitution that when two constructions are possible, the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of law nugatory : (Chandra Mohan v. State of U.P. AIR 1966 SC 1987). It is no doubt true that when the language is express and no alternative construction is open, the Court must give effect to the language irrespective of its consequences. But as was well said by Lord Reid, "such cases are rare because the English language is a flexible instrument" : (Ballrooms v. Zenith Investments, (1970) 2 All ER 871). The Courts are, therefore, not readily prepared to concede as plain language which involves absurdity or practical inconvenience: (Maxwell, 11th Edition, p. 6). The real role that is played by the consideration of consequences in the process of construction is correctly appreciated by Max Radin as follows:

"It is true that the consideration of the consequences of a decision has at all times been a controlling factor in the judicial process. Those Courts who declare vigorously that they are completely indifferent to the consequences of what they decide, and would decide as they do though the heaven fell, merely mean that they do not really believe that the consequences will be seriously harmful. If they meant what they said, and acted on it, they would be taking a long step towards the destruction of our judicial system." (33 Calif. L. Rev. 219, p. 228). If Clause (3) of Article 228A had used the words "any question, whether arguable or not" there would have been no room for construction. However, as



the words used are only "any question", they have to be understood as meaning any real question or any arguable question to avoid the ridiculous result and practical inconvenience which would flow from holding that the expression is wide enough to include even questions which are unreal or unarguable."

14. The definition of 'Intermediary' as reproduced above, also contains an exclusion as per which the person who supplies goods or services on his own account is not included. In the instant case, the appellant maintains accounts of its client, liaison with buyers and sellers of clients with respect to delivery, transportation of goods and payment etc. All the said services are provided as a package and are bundled in natural course of business. Therefore, the said services are "Composite Supply' as defined in Section 2 (30) of the Central Goods & Service Tax Act, 2017 and therefore tax would be levied in terms of Section 8 of the Act, *ibid*. Above referred statutory provision are reproduced below for ready reference.

"(30) "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; Illustration. - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Tax liability on composite and mixed supplies. — The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —

- a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."*

15. In the instant case, the appellant supply "Business Support Service' comprising of 'Back Office Support' and "Accounting' which is its Principle Supply. If these services also facilitate supply of goods, then it is only an incidental supply to the Principle Supply. As already submitted, the appellant come into picture only after finalization of Purchase / Sale deals by the clients. They said 'Business Support Services' is provided



by applicant to its client on Principle to Principle basis. Therefore, the instant case is covered by exclusion clause in definition of 'Intermediary'.

16. It is submitted that the term 'Intermediary' was also defined in Service Tax Regime. In Service Tax the term was defined in Rule 2(f) of the Place of Provision Rules, 2012 which read as under.
"(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"
17. From the above, it is clear that the definition of 'intermediary' in GST Law is identical to its definition under Service Tax. The above definition also contains an identical exclusion clause. CBEC in the Educational Guide released by it had explained the concept of 'Intermediary' and its exclusion clause in para 5.9.6, which read 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."
18. In the instant case also, the appellant is providing services to its clients on its own account and therefore, cannot be categorized as intermediary. An identical issue came before the Hon'ble Authority For Advance Ruling In Re :Godaddy India Web Service Private Ltd., reported as 2016 (46) S.T.R. 806 (A.A.R.).
19. In Godaddy (supra) the applicant proposed to provide support services in relation to marketing, branding, offline marketing, oversight of quality of third party customer care centre and payment processing, on principal to principal basis. Those services were proposed to be provided with the sole intention of promoting the brand GoDaddy US in India and thus augmenting its business in India. Therefore, those services proposed to be provided by the applicant, would support the business interests of GoDaddy US in India. The said service was proposed to be provided as a package. Hon'ble Authority accepted that the said services are bundled in natural course of business. The relevant portion of the said Ruling is reproduced below for ready reference.



"11. Applicant proposes to provide support services in relation to marketing, branding, offline marketing, oversight of quality of third party customer care centre and payment processing, on principal to principal basis. These services are proposed to be provided with the sole intention of promoting the brand GoDaddy US in India and thus augmenting its business in India. Therefore, these services proposed to be provided by the applicant, would support the business interests of GoDaddy US in India.

20. It has been submitted by the applicant that services to be provided by the applicant are not peculiar only in applicant's case but are provided by various Indian entities to their overseas customers in India as a single package. Further, supporting the business of GoDaddy US in India is the main service and processing payments and oversight of services of third party Call Centers are ancillary and incidental to the provision of main service, i.e., business support service. Further, applicant would provide said services as a package and the payment for the entire package would be a consolidated lump sum payment. Applicant submits that in view of all these indicators, service provided by them to GoDaddy US is a bundle of services, which is bundled in normal course of business. This point has not been controverted by the Revenue. We agree with the submissions of the applicant that proposed services are a bundle of services, bundled in normal course of business and not intermediary service.

21. It observed that business support services are proposed to be provided by the applicant to GoDaddy US on principal to principal basis. It is the main service. Further, applicant is not concerned in respect of services provided by GoDaddy US to Indian Customers, which relates to domain name registration, transfer services, web hosting services, designing services, etc. In case, applicant was providing service to Indian Customers, he would have received "consideration" from Indian Customers. Fact is that no remuneration/consideration is received by the applicant from Indian Customers. Applicant is to only receive from GoDaddy US, a fee equal to the operating cost incurred by the applicant plus mark up of 13% on such costs. It



is noticed that applicant is to receive said fees from GoDaddy US, even in respect of Indian Customers, who directly remit service charges to GoDaddy US through International Credit Card, wherein applicant is not in the picture. This fact further shows that the applicant is not providing any service to Indian Customs. In view of above we rule as under;"

22. The Appellant, further, submitted that the Ld. Authority for Advance Ruling have committed a grave error in holding that the facts of the present case are different and therefore, the same is not applicable. The said para of the Ld. Authority is reproduced below.

"Applicant submits that his case is covered by exclusion clause in definition of intermediary and in support of the same has strongly relied upon decision of Advance Ruling Authority, New Delhi in case of Godaddy India Web Service Pvt. Ltd. reported as 2016 (46) STR 806 (AAR) dated 04.03.2016 (in short Godaddy). We have gone through the facts of the case and the ruling and we find that facts of the present case are different and not similar to facts of M/s. Godaddy. In case of Godaddy the provision of support services was admittedly on principle to principle basis and were provided with sole intention of promoting the brand Godaddy US in India for augmenting its business. In the present case we find that the activities undertaken by the applicant are for and on behalf of client to facilitate supply of goods and services between the clients and their customers. In view of this, we are of the opinion that the judgment cited by the applicant is not applicable to the facts of the present case."

23. The Appellant submitted that there are host of grave errors in the portion of Impugned Ruling, as reproduced above. When marketing, branding, overseeing customer care, payment processing etc. are support services then, there is no reason to treat administrative and accounting support given by appellant as business support service. In Godaddy (supra) the applicant was supporting business of Godaddy USA's business in India. Whereas, in the instant case, the buyers / sellers are not limited to India, but are spread across the Globe. Thus, the case of applicant is at much better footing. The Ld. Advance Ruling Authority also failed to appreciate that the services provided by the Appellant were also on Principle to Principle basis. In the agreement, it was specifically mentioned that both the parties commit not to represent each other



as Agent / Principal of other party. The Ld. Advance Ruling authority also failed to appreciate that the appellant has no role to play till the deal of purchase / sale is brokered.

24. It is correct that the Ruling of Authority for Advance Ruling is binding only in respect of Applicant. However, it certainly has persuasive value. It should also be taken into consideration that Authority for Advance Ruling under Service Tax was consisting of very senior Tax Officers and was headed by a retired Supreme Court Judge. Therefore, interpretation of law by such a senior body should be given due regard. Attention is also drawn to the relevant portion of judgment of Hon'ble Supreme Court in *Columbia Sportswear Co. Vs. Director of Income Tax, 2012 (283) E.L.T. 321 (S.C.)* wherein the Hon'ble Supreme Court held as under. *"The Authority, thus, held that the advance ruling of the Authority is binding in the case of one transaction only and the parties involved in respect of that transaction and for other parties, the ruling will be of persuasive nature. The Authority, however, has clarified that this is not to say that a principle of law laid down in a case will not be followed in future. This decision of the Authority in Cyril Eugene Pereira, In re. (supra) has been taken note of by this Court in Union of India & Anr. v. Azadi Bachao Andolan & Anr. [(2003) 263 ITR 706 at 742] to hold that the advance ruling of the Authority is binding on the applicant, in respect of the transaction in relation to which the ruling had been sought and, on the Commissioner, and the income-tax authorities subordinate to him and has persuasive value in respect of other parties. However, it has also been rightly held by the Authority itself that this does not mean that a principle of law laid down in a case will not be followed in future."*

25. In the impugned ruling, it is also stated that they have not examined the contention of jurisdictional officer with regard to condition No. (v) as to distinct person which require more specific and detailed examination. The said condition is read as follows.

"(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;"

The explanation 1 in section 8 reads as under.

"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 registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons”

From the combined reading of above, it is clear that the aforesaid condition is attracted if both the supplier and recipient of service are establishments of same person. In the instant case Appellant, the supplier of service, and overseas recipient of service are different corporate entities, therefore, the said condition have no application.

26. In view of the above and submissions already made, it was prayed that the Services being provided / proposed to be provided be treated as 'Zero Rated Supplies'.

Personal Hearing

27. A personal Hearing in the matter was conducted on 29.01.2019, wherein Shri Bharat Bhusan, Advocate, representative of the Appellant, reiterated their written submissions. Shri Sachin Jadhav, appearing as jurisdictional officer, reiterated the submissions, which had been made earlier before the Advance Ruling Authority.

Discussion and Findings

28. We have gone through the facts of the case, the entire records, and submission, oral as well as written, made by the Appellant as well as the concerned officer. We have also gone through the ruling pronounced by AAR wherein the members of the AAR decided the services being rendered by the Appellant in the nature of intermediary services and hence taxable as per the provisions of the place of supply rule, even when the services are being rendered to the client located abroad. However, the Appellant has challenged this ruling of AAR, arguing that the services provided by them would rather fall under the Business Support Services, and hence, preferred appeal against the said impugned ruling.
29. On perusal of the same, the core issues, before us, to decide, are



(a) whether the back office administrative and accounting services along with the services such as liaison with buyers and sellers of clients with respect to delivery, transportation of goods and settlement of payment etc. in the form of one package, being provided by the Appellant, qualify as "intermediary services" as defined in Section 2(13) of the Integrated Goods & Service Tax Act, 2017 or otherwise.

(b) whether the supply of the above services in a package, as being claimed by the Appellant, would be construed as composite supply or otherwise.

30. To decide the first issue, we will first discuss the definition of the intermediary as provided in Section 2(13) of the CGST Act, 2017. The definition of the "intermediary" is reproduced herein under:

"(13) "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;

31. Hence, a person is covered under the aforesaid definition of 'intermediary' if following three conditions are satisfied.

- a. He must be a 'broker' or an 'agent' or 'any other person by whatever name called, who arranges or facilitates the supply of goods or services or both or securities'.
- b. The supply arranged or facilitated must be between two or more persons.
- c. He should not be the person who supplies the goods or services or securities on his own account.

32. Now, in order to understand the nature of services being supplied by the Appellant to its Client, we refer to the Article 2 of the Agreement dated 30.12.2017 entered by the Appellant with its client M/s. Vikudha Overseas Corporation Ltd., which deals with the nature and scope of the work undertaken by the Appellant, reproduced herein below:

"The party B (which in this case is the Appellant) will coordinate with buyers, sellers and other necessary parties for execution of purchase and sale contracts entered into by the Party A (in this case M/s. Vikudha Overseas Corporation Ltd.). The Party B will also maintain accounting of all these transactions. The Party A will provide access to its software "VOSS" to the Party B for rendering the agreed services. The major



service activities to be undertaken by the Party B for, and on behalf of Party A are mentioned below:

- (a) Get SDF (Sales Detail Form) & PDF (Purchase Detail Form) from concerned party;*
- (b) Generate order no. in VOSS;*
- (c) Create (P. O.)Purchase Order & SC (Sales Contract) in VOSS;*
- (d) Send SC (Sales Contract) & PI (Proforma Invoice) to customer & get SI (Shipping Instructions) as well;*
- (e) Send PO (Purchase Order) to supplier & seek PI (Proforma Invoice) & share SI (Shipping Instructions);*
- (f) Liaise with supplier for Cargo Readiness;*
- (g) Liaise with Inspection Authorities if pre-shipment inspection is needed;*
- (h) Inform customer on tentative schedule;*
- (i) Process payment request in VOSS;*
- (j) Send payment request to Client;*
- (k) Provide forwarder/carrier nomination to supplier if FOB;*
- (l) Seek carrier booking details and share with supplier and customer;*
- (m) Follow up for smooth SOB (Shipped on Board) with supplier and forwarder;*
- (n) Log it in Excel Order Sheet – ETD-ETA (Estimated Date of Arrival – Estimated date of Departure);*
- (o) Get Draft BL (Bill of Lading) prior to sailing;*
- (p) Follow up for full shipping documents with supplier;*
- (q) Raise payment request in VOSS for supplier for balance and final payment;*
- (r) Send payment request to Group Company for supplier for balance or final payment;*
- (s) Arrange Inspection Certificates if applicable;*
- (t) Raise payment request for freight and inspection charges as applicable;*



(u) Arrange to send originals to Hong Kong;

(v) Follow up for Originals sent to Customer from Group Company;

(w) Notify ETA – reminder to customer (Expected Time of Arrival);

(x) Troubleshooting;”

33. Now, on perusal of the above cited article, which deals with the nature of the services liable to be performed by the Appellant, it is observed that in addition to providing back office administration and accounting services, the Appellant is also providing several other significant services, which are actually facilitating the supply of the goods between its Client i.e. M/s. Vikudha Overseas Corporation Ltd., Hongkong and the suppliers, or the customers of its Client, as the case may be. The services, namely, (i) sending SC (Sales Contract) & PI (Proforma Invoice) to customer & getting SI (Shipping Instructions) from them; (ii) sending PO (Purchase Order) to supplier & seeking PI (Proforma Invoice) & sharing SI (Shipping Instructions) with them; (iii) liaising with the supplier for Cargo Readiness; (iv) liaising with Inspection Authorities if pre-shipment inspection is needed; (v) informing customer on tentative schedule; (vi) Providing forwarder/carrier nomination to supplier if the goods are being supplied on FOB; (vii) Seeking carrier booking details and sharing the same with the suppliers and customers; (viii) Following up for smooth SOB (Shipped on Board) with supplier and forwarder; (ix) Getting Draft BL (Bill of Lading) prior to sailing; (x) Following up, for full shipping documents, with supplier; (xi) Arranging Inspection Certificates if applicable; (xii) Notifying ETA – reminder to customer (Expected Time of Arrival) are all **beyond the scope of back office work** and are in the nature of facilitation of the supply of the goods between the two parties i.e. their Client and the suppliers and customers of the Client, as the case may be, as all these above mentioned services are essential for the smooth supply of the goods between the aforesaid two parties. Further, there is no confusion regarding the fact that the goods which are being supplied between the two parties i.e. their client and supplier or customer, as the case may be, do not belong to the Appellant **confirming that the Appellant are not providing the supply of goods on their own account.**

34. The other remaining services, enumerated in the para 32 above, namely,



- (i) Getting SDF (Sales Detail Form) & PDF (Purchase Detail Form) from concerned party;
- (ii) Generate order no. in VOSS;
- (iii) Create (P. O.) Purchase Order & SC (Sales Contract) in VOSS;
- (iv) activities relating to maintaining of various types of accounts with respect to such sales and purchase transactions carried out by their Client;
- (v) Process payment request in VOSS;
- (vi) Send payment request to Client; Log it in Excel Order Sheet – ETD-ETA (Estimated Date of Arrival – Estimated date of Departure); Raise payment request in VOSS for supplier for balance and final payment;
- (vii) Send payment request to Group Company for supplier for balance or final payment;
- (viii) Raise payment request for freight and inspection charges as applicable;
- (ix) Arrange to send originals to Hong Kong;
- (x) Follow up for Originals sent to Customer from Group Company;
- (xi) Troubleshooting;

can be construed as ancillary services to intermediary services being provided by the Appellant, as these activities performed by the Appellant are, undoubtedly, in relation to the supply of the goods between the two persons. Thus, the predominant component of the services, being rendered by the Appellant to its Client, are in the nature of the intermediary. This fact is also substantiated by the Article 4 of the above discussed Agreement, which deals with the consideration receivable by the Appellant for the services provided by them. The Article 4 stipulates that the Appellant would receive a remuneration of US \$ 380 per purchase/sale transaction handled, subject to minimum of US\$10,000 per month. This pattern of the remuneration received by the Appellant reveals that the consideration being received by the Appellant is solely based on the number of the purchase/sale transactions handled by them. By looking carefully at the nature of the services provided by them, it is abundantly clear that they are invariably facilitating the supply of goods between their client and its



suppliers/buyers, while they are liaising with client's buyers/suppliers with respect to delivery, transportation of goods, and settlement of payment between them, thereby satisfying the first criterion of the intermediary i.e. **arranging or facilitating the supply of goods.**

35. Since, the Appellant is doing the above work on behalf of their client and the said supply of goods is invariably between two persons, i.e. between their client and its buyers/suppliers of goods, thereby, satisfying the second criterion of the intermediary.
36. Further, the Appellant is not providing the goods in question, either to its client's buyers or to its client's suppliers on his own account. The goods in the question invariably belong either to its client or to its client's supplier. Thus, the above goods are, clearly, not provided on their own account, thereby, satisfying the third criterion of the intermediary services.
37. Thus, all the criterion applicable to the intermediary, as discussed above are being satisfied adequately by the Appellant. Hence, while performing all the above mentioned activities, the Appellant is clearly acting as intermediary.
38. The argument of the appellant that the impact of AAR ruling will result in subjecting the back office operations to GST which will affect the industry engaged in supplying such services to its overseas clients, is ill-found and misconstrued. The ruling given by AAR is always applicant specific and based on the records available before the Authority. We have also perused the agreement between the Appellant and its Client which was also the subject matter of proceedings before the AAR. The said agreement in no way is restricted to the scope of only the back office operations of the Appellant, rather, it goes beyond the same and is in the nature of intermediary as discussed above. Therefore, there does not appear to be any intention of the AAR to tax the back operation of the Appellant and the Ruling of AAR which is based on a specific agreement can not be generalized.
39. Now, as regards the issue (b) mentioned above as to whether the entire gamut of services provided by the Appellant as a package against a lump sum amount can be considered as composite supply, or otherwise, it is seen that the Appellant has himself advocated in para 20 above that the entire services i.e. back office administrative



services, accounting services, liaising services with respect to the delivery, transportation of goods, settlement of payments between its client and suppliers/buyers are naturally bundled in the ordinary course of business and accordingly can be considered as composite supply due to the reason that the services to be provided by the applicant are not peculiar only in Appellant's case but are provided by various Indian entities to their overseas customers in India as a single package. Thus, they strive to argue that the practice of offering the above services in the form of a single package is the established trade practice.

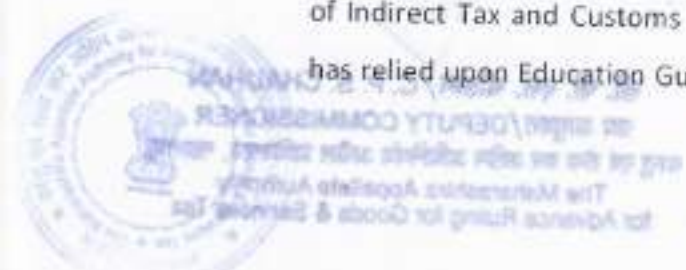
40. To ascertain the above issue, firstly we discuss the term 'naturally bundled and supplied in conjunction with each other in the ordinary course of business.' Although the same is not defined in CGST Act or IGST Act, yet we note that the concept has been carried forward from the Service Tax law. Hence, we take the reference to **Taxation of Services: An Education Guide (June 20, 2012)**, which provides that, to demonstrate that a service is supplied in conjunction with each other in the ordinary course of business, the supply of services should meet some of the following criterion which are indicative, not conclusive:

- **The perception of the recipient of service:-** If the recipient of the services perceives and expect the services being received by them as one package for better enjoyment of the services being offered by the service providers operating in that particular industry, then those services may be considered as naturally bundled in the ordinary course of business. In the instant case, the Appellant during the course of personal hearing have emphasized that their clients also expect the entire gamut of services to be provided in one package so as to suit their business needs. Applying this parameter, it may verily be inferred that entire set of services is a composite supply.
- **Majority of similar service provider in the industry provide similar bundle of service:** As regards this very indicative parameter, the Appellant has himself submitted in para 20 above, theirs is not the peculiar case, as this practice of bundling the various services offered by them is being followed by majority of the service providers operating in this very service industry. Applying this criterion in



the present case, it is deduced that the entire set of services is a composite supply.

- **One service is the main service and other services provided in the bundle are incidental or ancillary to the main service.** In the instant case, the Appellant submitted that they are supplying back office administrative services, accounting services, liaising services with respect to the delivery, transportation of goods, payment settlement etc. Among these services, it is apparent that the principal supply of the Appellant are in the nature of the intermediary services which comprises of facilitating the supply of goods by making the transportation and other arrangement in respect of goods by coordinating with the client and its buyers/suppliers. The said activities undertaken by the Appellant on behalf of the client like making the transportation arrangement in respect of the goods by availing the facility of some other service providers aptly fall under the category of intermediary services as discussed above. The other services like the back office administrative services and accounting services are ancillary in nature, whereas the services of payment settlement with client's supplier/buyers is incidental in nature. Thus, by applying the above criterion for the composite supply, it is adequately clear that intermediary service is the principal supply and other services provided in the bundle are incidental or ancillary to the main service.
 - **The service recipient pays single price regardless of the services within the package:** In the instant case, the Appellant has submitted that they are receiving a lump sum against the entire set of services provided to their overseas client, thereby, adhering to this indicative criterion of the bundled services or composite supply.
41. Thus, by applying the various indicative criteria to the spectrum of services provided by the Appellant, it is apparent that the services being offered by the Appellant in one package is nothing but the composite supply, of which the intermediary services is the main supply.
42. Our above observation also draws support from GST flyer issued by the Central Board of Indirect Tax and Customs ("CBIC") on Composite Supply and Mixed Supply which has relied upon Education Guide on Service tax for the determination of any group of



services as composite supply. The GST Flyer, issued in this regard, proposes that *"Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate" and the same will be determined by the principles of the natural bundling as stipulated under Education Guide on Service tax.*

43. The claim of the Appellant about principal supply being 'Back office Support' and 'Accounting' and other services being ancillary is not tenable as the services detailed in para 33 above cannot be considered as ancillary services to the 'Accounting Services' and/or 'Back Office Support' services.
44. As regards the submission made by the Appellant in para 18 above, wherein they are asserting that they are providing services to clients on own account, and therefore cannot be categorized as intermediary, it is observed that Appellant have misconstrued the definition of "intermediary" as provided in Section 2(13) of the IGST Act, 2017. It is seen that the services they are rendering are in relation to the goods in question which belong to either their overseas client or the client's supplier, as the case may be. Hence the above contention made by the Appellant is clearly not tenable.
45. Thus, in view of the above discussion and findings, we pass the following order:

ORDER

In view of our above observation and findings, we do not find any reason to interfere with the ruling passed by the AAR.


(RAJIV JALOTA)
MEMBER


(SUNGITA SHARMA)
MEMBER

Certified true copy.



सी. पी. एस. चौहान / C. P. S. CHAUHAN
उप आयुक्त / DEPUTY COMMISSIONER
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for Advance Ruling for Goods & Services Tax



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