

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010,
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

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

GSTIN Number, if any/ User-id		271900000182ARU (TRN)
Legal Name of Applicant		MAANSMARINE CARGO INTERNATIONAL LLP
Registered Address/Address provided while obtaining user id		1102, Gamba Tower CHS Ltd 4, Bungalow Road, Andheri West, Opp. Good Shepherd Church, Mumbai - 400053
Details of application		GST-ARA, Application No. 04 Dated 15.04.2019
Concerned officer		Asstt. Commr. CGST, Divn - III, Mumbai West Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	SERVICE PROVISION
B	Description (in brief)	We have been offered a Business process outsourcing (BPO) work from Hong Kong based shipping Co. MSS Marine Ltd. MSS Marine is involved in worldwide shipping consultancy and logistics arrangement of cargoes. We would be doing the below stated job on behalf of the Company Outside India. <ol style="list-style-type: none"> 1. Handling all communications between vessel owners, shippers, Consignees, various port agents. Passing information to all parties with regards to vessel schedule and her operations. 2. Drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe 3. Preparing reports on time used per voyage and presenting to shippers reports on additional time used per shipment. 4. Preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals. 5. Reconciling accounts for our principal. 6. As required travel to various countries at principals cost to meet with port agents, shippers, charterers to discuss operational efficiency
Issue/s on which advance ruling required		(v) determination of the liability to pay tax on any goods or services or both (vi) whether applicant is required to be registered under the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

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

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/S. MAANSMARINE CARGO

INTERNATIONAL LLP, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether we need to apply for GST registration as the services provided are export of services?
2. Whether can we do supply of such services under LUT?
3. Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?
4. Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

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

"We are mainly in to Management consultancy services to ship owners, logistics services through water etc in Mumbai. Previously we had applied for GST registration, however, as our turnover was not exceeding the exemption limit we have applied for cancellation of GST registration w.e.f. 28/05/2018.

Now, we have been offered an outsourcing work of managing the shipping operations of Hong Kong based shipping company MSS Marine Ltd, which is involved in worldwide shipping consultancy and logistics arrangement of cargoes. Primarily their ships trade between several ports in middle east countries of Saudi Arabia, UAE & other Asian countries including India, Thailand, China, Korea, Taiwan, Singapore. A few of their vessels also trade into Europe.

MSS Marine will outsource the following job to us:

- Handling all communications between vessel Owners, shippers, consignees, various port agents. Passing information to all parties with regards to vessel schedule and her operations.
- Drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe.
- Preparing reports on time used per voyage and presenting to shippers reports on additional time used per shipment.
- Preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals.



- Reconciling accounts for our principal.
- As required travel to various countries at principals cost to meet with port agents, shippers, charterers to discuss operational efficiency.

We would be incurring the following expenses approximately to carry out the above job:

1. Salary to employees - We shall employ 10-15 experienced ship operators and office assistants on behalf of MSS Marine Ltd and total salary would be approximately between Rs 7-10 lacs per month which will be reimbursed on actual basis from the MSS Marine Ltd
2. Office would be taken on rent & the rent would be reimbursed on actual basis from MSS Marine Ltd
3. Office expenses such as telephone expenses, electricity, purchasing computers, internet, office furniture, staff welfare, etc. will also be reimbursed on actual basis from MSS Marine Ltd
4. Travel costs such as tickets, lodging boarding on actual basis
5. The Applicant will charge management fees from MSS Marine Ltd for managing the above job.

We are planning to structure the agreement in such manner wherein it will be clearly mentioned that we will be charging management fees for the work and all the other expenses incurred shall be reimbursed on actual basis. All the payments would be received in foreign convertible exchange.

We are under negotiation with the MSS Marine Ltd on the work. However, MSS Marine Ltd is not willing to pay GST over and above the management fees as it will make our quotation high and non-competitive compared to other competitors and if we pay the same out of our pocket we would be under loss and the whole business would be unviable for us.

Considering the above facts, we have the following questions for advance ruling:

1. Whether we need to apply for GST registration as the services provided are export of services?
2. Whether can we do supply of such services under LUT?
3. Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?
4. Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?

Addition submissions

In this connection, we wish to submit as under:

Brief about the Indian Company:

Maans Marine Cargo International LLP (LLPIN-AAB-8239) is mainly engaged in to Management consultancy services to ship owners, logistics services through water etc in

Mumbai having registered address at 1102, Gambs Tower CHS Ltd, 4, Bungalow Road, Andheri West, Mumbai-400 053. Applicant had applied for GST registration previously but cancelled the same with effect from 28/05/2018 as the turnover was not exceeding the exemption limit.

Brief about the Hong Kong Company:

MSS Marine Ltd. is involved in worldwide shipping consultancy and logistics arrangement of cargoes. Primarily their ships trade between several ports in middle east countries of Saudi Arabia, UAE and other Asian countries including India, Thailand, China, Korea, Taiwan, Singapore. A few of their vessels also trade into Europe having registered office at Unit M, 1/F., Mau Lam Comm. Bldg., 16-18 Mau Lam Street, Jordan, KLN, Hong Kong.

Brief about the Transaction:

Maansmarine Cargo International LLP and MSS Marine Ltd proposed to enter into an outsourcing agreement through which Maansmarine Cargo International LLP shall provide backend services in respect of foreign business carried out by MSS Marine Ltd in Hong Kong. The copy of the draft agreement is attached as *Annexure 2*.

The Services to be provided by Maansmarine Cargo International LLP are stated in **Schedule I** of the draft agreement are as follows:

- Handling all communications between vessel owners, shippers, consignees, various port agents. Passing information to all parties with regards to vessel schedule & her operations.
- Drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe.
- Preparing reports on time used per voyage and presenting to shippers reports on additional time used per shipment.
- Preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals.
- Reconciling accounts for our principal.
- As required travel to various countries at principals cost to meet with port agents, shippers, charterers to discuss operational efficiency.

The above services will be provided by the applicant on his own account.

Applicant will charge management fees for providing above stated services on his own account to MSS Marine Ltd.

For providing the above transaction, Maansmarine Cargo International LLP will not sub contract or outsource the work further and will carry out the said work. For the same, applicant will take the office on rent, hire employees and incur other expenses such as telephone, internet etc in order to carry out the work of MSS Marine Ltd.



As per draft agreement, Maansmarine Cargo International LLP will charge them USD 25,000/- per ann. for Export of Management & consultancy services & for the other expenses like rent, electricity, payroll etc. i.e. reimbursement of expenses, it shall be reimbursed on actual basis by MSS Marine Ltd. All the payments would be received in foreign convertible exchange.

Further, as per the recent **circular no. 107/26/2019-GST of CBDT dated 18th July 2019** (attached as **Annexure 3**), certain clarifications have been provided in relation to Information Technology enabled services ('ITes Services'), wherein ITes services which are not defined under the GST law but the definition is taken from sub-rule (e) of Rule 10TA of the Income Tax Rules, 1962 pertaining to Safe Harbour Rules for International Transaction which is as under:

"information technology enabled services" means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—

(i) back office operations;

(ii) call centres or contact centre services;

(iii) data processing and data mining;

(iv) insurance claim processing;

(v) legal databases;

(vi) creation and maintenance of medical transcription excluding medical advice;

(vii) translation services;

(viii) payroll;

(ix) remote maintenance;

(x) revenue accounting;

(xi) support centres;

(xii) website services;

(xiii) data search integration and analysis;

(xiv) remote education excluding education content development; or

(xv) clinical database management services excluding clinical trials, but does not include any research and development services whether or not in the nature of contract research and development services.

Further, the circular also provides the definition of Intermediary defined in sub-section (13) of Section 2 of IGST Act, 2017 as 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.

The **applicant** is not arranging or facilitating the supply of goods or services or both to MSS Marine Ltd but they are providing ITes services as defined in Section 10TA of Income Tax Rules, 1962 to the MSS Marine Ltd on his own account.

Hence, considering the above it may be constructed that the applicant is not an intermediary and is providing all such services on own account.

During the preliminary hearing dated 30th April, 2019, application for advance ruling was admitted by your Honors and question number 1 & 2 were withdrawn.

Submission on question 3: Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling costs, etc.?

The following expenditure shall be reimbursed by PRINCIPAL to Agent on actual basis with prior approval of PRINCIPAL. To claim such expenses, Agent should produce actual bill, vouchers / cash payment receipts to PRINCIPAL:

1. Salary of employees – As per Contract with Employee.
2. Rent of Office – As per Rent Agreement
3. Office expenses - such as Telephone expenses, Electricity expenses, staff welfare, purchase of furniture and computer equipments for the office, etc.
4. Travelling and hotel stay expenses of employees and authorized representative of company for work purposes.

The expenditure would be purely incurred for MSS Marine Ltd. & shall be reimbursed on actual basis which shall be received in foreign convertible exchange. For payment of such expenses, applicant will take prior approval of MSS Marine Ltd and also as per compensation for services, the applicant will raise separate invoices for reimbursement of expenses & Management Fees as stated in the draft outsourcing agreement attached as **Annexure 2**.

We are acting as **pure agent** to MSS Marine Ltd. and these transactions as covered in Rule 33 of the GST rules. The rule is reproduced as under:

Value of supply of services in case of pure agent.-Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) *the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;*
- (ii) *the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) *the supplies procured by the pure agent from the third party as a pure agent of*

the recipient of supply are in addition to the services he supplies on his own account. Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to amount received for supply he provides on his own account.

Prayer:

In view of the above, it can be constructed that the said transaction will be of Pure Agent as defined in explanation to Rule 33 and it also fulfills all the conditions as per Rule 33 and not termed as supply of services under GST.

Submission on question 4: Whether GST is applicable on Management fees charged by us to the Company for managing the job outsourced to us?

1. The Management services shall include general consultancy in relation to the transactions stated in brief facts.

2. Management fees charged would qualify as export of services and no GST is payable:

3. As per legal understanding, the aforesaid services rendered by applicant would qualify as "Zero Rated Supply" in terms of Section 16 of the Integrated Goods & Service Tax Act, 2017 for the reasons stated hereinafter. The provisions contained in Section 16 of the Act, ibid are reproduced below for ready reference.

"16. Zero rated supply. –

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:

(a) Export of goods or services or both; or

(b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:



(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made there under."

4. Further, recent circular (attached as *Ann. 3*) also clarifies that supplier of ITeS services, **who is not an intermediary in terms of sub-section (13) of section 2 of the IGST Act, can avail benefits of export of services (is a zero rated supply)** if he satisfies the criteria mentioned in sub-section (6) of section 2 of the IGST Act, which reads as under-*export of services*// means the supply of any service when,—

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

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

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

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

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

The above said services are in nature of **'Export of Services'** and the applicant shall provide general advice and assistance in relation to such services, as required, from time to time.

Further, the said fees shall be received in **foreign convertible exchange.**

Prayer:

In view of the above, it can be constructed that the said services as mentioned above in the brief facts fulfills all the conditions for treating the supply of services as an export of services in terms of Section 6 of the IGST Act.

Considering the above, we request your Honors to kindly accept the submissions treat the reimbursement of expenses under Rule 33 and exclude the same from supply of services and Management fees as export of services under Section 6 of the IGST Act.

We hope above information and documents would suffice your purpose. In case you need any further details or clarifications do let us know.

3A. Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).

1. No GST applicable on reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.

2. We are acting as *pure agent* to MSS Marine Ltd. and these transactions as covered in Rule 33 of the GST rules. The rule is reproduced as under:

Value of supply of services in case of pure agent.-Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service, and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to amount received for supply he provides on his own account.

3. Management fees charged would qualify as export of services and no GST is payable;

4. As per legal understanding, the aforesaid services rendered by the us would qualify as "Zero Rated Supply" in terms of Section 16 of the Integrated Goods & Service Tax Act, 2017 for the reasons stated hereinafter. The provisions contained in Section 16 of the Act, ibid are reproduced below for ready reference.

"16. Zero rated supply. -

- (1) "zero rated supply" means any of the following supplies of goods or services or both, namely: (a) export of goods or services or both; or (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; OR

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder."

5. As per the above stated legal provisions Export of Services is a zero rated supply, The phrase "Export of Service" is defined in Section 2(6) of the Act, ibid and read as under:

6. (6) "export of services" means the supply of any service when, -

a) The supplier of services is located in India;

b) Recipient of services is located outside India;

c) The place of supply of services is outside India;

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

e) 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.

It is humbly submitted that the services rendered by us satisfy all the aforesaid conditions, as explained hereinafter. Considering the above, we have complied with all the conditions for export of services and hence covered under the definition of "Zero Rated Supplies".

3. CONTENTION - AS PER THE CONCERNED OFFICER

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

1. "This office does not possess any records relating to the Cen. Excise registration and/or Service tax registration or disputes, if any for the past period on the issue under consideration. So, it is not in a position to provide requisite details sought vide notice under AR provisions or comment on any past practice/status. The position including disputes if any, on the issue in question for past period therefore may kindly be caused to be disclosed by the party.



As such, the submissions hereinafter are being made without prejudice to any position under the existing law.

2. At the outset after going through the ARA application it appears that applicant has not submitted copy of any draft agreement/contract or offer letter received from the customer MSS Marine Ltd., Hong Kong to evaluate the terms of the contract/outsourcing job from GST perspective on merits. Terms of the contract could provide vital details of supply and nature of earnings to be received etc. Therefore application filed by the applicant is incomplete/unsubstantiated.

2.1 Ongoing through details furnished by the applicant on the nature of activity in statement to application, it is interalia forthcoming that with respect to job to be outsourced to the applicant management fees would be received by them. In addition they would also be getting reimbursement of establishment expenses to be incurred here in the taxable territory. The comments on question placed before the ARA are as follows:

3. Whether they need to apply for GST registration as the services to be provided considered as "export of services"?

3.1 (i) In this regard, it may be stated that the applicant has described nature of their service/supply under Sr. 12B (Description) of the Application form ARA-01 as, BPO work on behalf of the company i.e MSS Marine Ltd. Hong Kong interalia involving (1) Handling all communications between vessel owners, shippers, consignees, various port agents. Passing information to all parties with regards to vessel schedule and her operations. (2) Drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case may be. (3) Preparing reports on time used as per voyage and presenting to shippers reports on additional time used per shipment. (4) Preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals (5) Reconciling accounts for our principal (6) As required travel to various countries at principals cost to meet with port agents, shippers, charterers to discuss operational efficiency. Ongoing through the entire nature of work to be undertaken, the same appears to be getting covered as that of 'Intermediary defined under IGST Act, 2017, is as 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;

(ii) Thus the services to be provided by the applicant would be nothing but "Intermediary services which fall under the provisions of Section 13 (8)(b) of IGST Act ibid, wherein it is provided that the place of supply of such services shall be the location of the

supplier of services. In this view, the services to be provided by the applicant do not qualify to be regarded as 'Export of service when read with Section 2(6) of the Act ibid and therefore they would be liable to obtain registration under GST and discharge tax on services so provided.

(iii) Without prejudice to above, it is also forthcoming from their submission that the ships would trade between several ports in middle east countries of Saudi Arabia, UAE and other Asian countries including India, Thailand, China, Korea, Taiwan, Singapore and few vessels in Europe. Here, it would be apt to consider concept of 'Supplies to territorial waters' which clarifies that where the location of the supplier or place of supply is in the territorial waters of India then such location or place is deemed to be in the coastal state or Union territory where the nearest point of the appropriate baseline is located. Since the nature of services to be provided as declared are related to vessel owners, shippers, charterers, consignees, port-agents etc. who or such vessels could also be located within Indian territorial waters/territory while providing service. In that case and to that extent, location or place of supply would be deemed to be Indian territory itself.

3.2 Whether they can supply such services under LUT?

As the place of supply of services as discussed in previous para becomes location of the supplier, hence being taxable, answer to this question is in the negative.

3.3 Whether GST is applicable on reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?

The reimbursement shown is pertaining to establishment cost i.e office expenses etc. which would be incurred for running office by the supplier in India. The same would be recovered in addition to management fees from their clients, therefore it is an additional consideration for the supply. As such, the same needs to form part of the taxable supply/value as per Section 15(2)(c) of CGST Act and GST would be applicable on the same.

3.4 Whether GST will be applicable on the management fees charged by the applicant to clients for managing the job outsourced to them?

In view of the reply to question 1 above, since the place of supply is deemed to be within taxable territory, GST would become applicable on the management fees.

4. So far as endorsing themselves as 'Pure agent' in applicant's statement of interpretation of law is concerned, it may be pertinent to mention that the said provision pertains to exclusion of certain expenditure or costs from the value of supply subject to satisfaction of all the conditions spelt out in Rule 33 of CGST Rules and is not related to applicability of GST, hence needs to be considered in that context.

4.1 In this regard, it appears that conditions (i) and (iii) of Rule 33 (wherein condition (ii) is complimentary to condition (i) & procedural in nature) which pertain to payment to third parties

on authorization of recipient & supplies procured by the pure agent from the third party respectively are not getting satisfied when read with the details of job to be outsourced to them by MSS Marine Ltd. as submitted by them, hence they are out of the purview of Rule 33 ibid.

4.2 In view of submissions in para 3 above, their supply of service cannot be regarded as 'Zero rated supply'.

5. In view of the foregoing, it appears that applicant does not appear to be eligible to tax exemption/benefit sought and their application deserves to be rejected accordingly. Considering the above submission and facts available on records, Honourable ARA may take the decision based on merit as deemed fit.

4. HEARING

Preliminary hearing in the matter was held on 07.05.2019. Sh. Manthan A. Ruparelia, C.A. appeared and requested for admission of their application. He has withdrawn question nos 1 and 2. Jurisdictional Officer was not present for the preliminary hearing.

Application was admitted & called for final hearing on 02.08.2019. Sh. Manthan A. Ruparelia, C.A., appeared, made oral and written submissions. Jurisdictional Officer Sh. Rajesh Sharma suptt., also appeared and made written submissions.

5. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office. Their queries are in respect of a proposed transaction to be undertaken by them.

The question numbers 1 and 2 have been withdrawn by the applicant and therefore we will take up for discussion, the issues in the question nos. 3 & 4 raised by the applicant which are as under:-

3. Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?
4. Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?


The applicant has submitted that they propose to enter into an outsourcing agreement through which they will provide backend services in respect of foreign business carried out by MSS Marine Ltd in Hong Kong and the job includes : handling all communications between vessel Owners, shippers, consignees, various port agents, Passing information to all parties with regards to vessel schedule and her operations, Drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe, Preparing reports on time

used per voyage and presenting to shippers reports on additional time used per shipment, Preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals, Reconciling accounts for their principal, as required, travel to various countries at principal's cost to meet with port agents, shippers, charterers to discuss operational efficiency.

To perform the above said work, applicant will be paid management fees & in addition to it they will also be reimbursed on actual basis, salary paid to their employees, office rent, other office expenses such as telephone expenses, electricity, purchasing computers, internet, office furniture, staff welfare, etc. & travel costs such as tickets, lodging boarding, etc.

They have submitted that the proposed agreement will separately mention, both management fees and other expenses to be reimbursed on actual basis. Further they have submitted that all the payments would be received in foreign convertible exchange.

The applicant has submitted a list of jobs that will be provided by them to their foreign client which includes handling all communications between vessel Owners, shippers, consignees, various port agents, passing information to all parties with regards to vessel schedule and her operations, drafting contracts of shipments and sending the same to ship owners and shippers or charterers as the case maybe, preparing reports on time used per voyage and presenting to shippers reports on additional time used per shipment, preparing invoices on behalf of clients as per contract and presenting them to charterers as per approval from principals, travel to various countries at principals cost to meet with port agents, shippers, charterers to discuss operational efficiency, etc.



It is very clear from a reading of the work to be provided that the applicant is arranging or facilitating the supply of goods or services or both between various persons. As defined under Section 2[13] of the IGST Act, 2017) "*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.*"

It is evident that the applicant is arranging or facilitating the business of its foreign client by liaising with their customers for the purpose of commercial relationships between the service recipient and vessel Owners, shippers, consignees, various port agents. From their submissions, it is seen that certain activities are undertaken by the applicant on behalf of their foreign client, and they are seen as fulfilling the criteria of the Agent as defined under Section 2(5) of the CGST Act, 2017. It is also seen that the nature of the supply in this case does not show that the supply is being undertaken by the applicant on their own account, for example, when the applicant's personnel travel to various countries to meet with port agents, shippers, charterers to

discuss operational efficiency they would be actually facilitating the supply of services between such persons. The travel to the various port agents, shippers, charterers would be on behalf of their client namely MSS Marine Ltd, Hong Kong and would report back the concerns, ideas, etc of port agents, shippers, charterers to MSS Marine Ltd, Hong Kong. These services are not rendered on their own account. Further, handling communications between Vessel Owners, shippers, consignees, various port agents, passing information to all parties with regards to vessel schedule, etc is nothing but facilitating the supply between such persons. We do not agree with the applicant's submission that they are not arranging or facilitating the supply of goods or services or both to MSS Marine Ltd. We are of the view that the applicant is an intermediary in the subject transaction.

Our conclusion that the applicant is an intermediary, is fortified by the decision of the Appellate Authority for Advance Ruling, Maharashtra issued vide Order No. MAH/AAAR/SS-RJ/01/2019-20, Dated- 19th June, 2019 in the case of Asahi Kasei India Pvt. Ltd.

Since we find that the applicant is an intermediary, as per the provisions of Section 13 (8)(b) of IGST Act, the place of provision of the service in the subject case is the location of the supplier of services i.e. the applicant and since the place of supply is in taxable territory, we hold that they will be liable to discharge GST on such services provided by them. Therefore we hold that GST will be applicable on the management fees charged by the applicant. This would answer their question number 4.

Now we take up question no. 3 which is as follows:-

Whether GST is applicable on reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?

The applicant has submitted that certain expenditure like salary of employees, rent of their offices, other office expenses and travel and hotel stay expenses of their employees for work purposes shall be reimbursed by MSS Marine Ltd to them and are on actual basis done with prior approval of MSS Marine Ltd. Hence along with other arguments, the applicant has contended that such reimbursements are received by them in the capacity of a pure agent and is therefore not taxable under GST laws.

As per Rule 7 of Draft Determination of Value of Supply Rules the expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied:-

- 1. The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply.*

2. *The recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply.*
3. *The recipient of supply is liable to make payment to the third party.*
4. *The recipient of supply authorizes the supplier to make payment on his behalf.*
5. *The recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party.*
6. *The payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service.*
7. *The supplier recovers from the recipient of supply only such amount as has been paid by him to the third party and*
8. *The services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.*

We have already found that the applicant is not a pure agent. In the subject case the applicant is making payments to vendors for supply received by them. The applicant is not making payment to the third party for the services rendered by such third party to the recipient of supply, under a contract for supply. In the subject case the recipient of supply is not liable to make payment to third parties and therefore it can be said that the applicant is not making payments on behalf of the recipient of supply. Hence it is seen that conditions mentioned at 1 to 3 above are not fulfilled in the subject case and therefore the applicant is not acting as a pure agent of the recipient of supply.

Further, the applicant has cited CBDT Circular no. 107/26/2019-GST of CBDT dated 18th July 2019 and have contended that they are providing ITes services as defined in Section 10TA of Income Tax Rules, 1962 to MSS Marine Ltd on their own account. The said Circular is not applicable to GST Laws and therefore we are not discussing the same in this order.

The reimbursement received by the applicant pertains to establishment costs which would be incurred by them for running their office in India. In any normal business such expenses are borne by the supplier of service and it is but natural that they would include such costs in the value to be received from the recipient of their services. In the subject case the said costs, are termed as reimbursements and are recovered in addition to management fees from their clients and therefore it is nothing but additional consideration charged for the supply in this case. The provisions of Section 15 of the CGST Act, which deals with the transaction value are very clear and as per the said provisions the valuation of supply will include all costs, including the employee cost provided by one distinct entity to the other distinct entities.

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

ORDER

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

NO.GST-ARA-04/2019-20/B- 97 Mumbai, dt. 23/08/2019

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

Question 1: -Whether we need to apply for GST registration as the services provided are export of services?

Answer :- Withdrawn by the applicant.

Question 2:- Whether can we do supply of such services under LUT?

Answer :- Withdrawn by the applicant.

Question 3:- Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?

Answer :- Answered in the affirmative.

Question 4:- Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?

Answer :- Answered in the affirmative.



—cd—
B. TIMOTHY
(MEMBER)

—cd—
B. V. BORHADE
(MEMBER)

Copy to:-

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

CERTIFIED TRUE COPY

Lech
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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