

**AUTHORITY FOR ADVANCE RULING, TAMILNADU**  
**INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, SURVEY NO.32,**  
**5<sup>TH</sup> FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,**  
**CHENNAI – 600 003**  
**ADVANCE RULING U/s.98 OF THE GOODS AND SERVICES TAX ACT, 2017**

**Members present are:**

1. Ms. Manasa Gangotri Kata, I.R.S., Additional Commissioner/Member,  
Office of the Commissioner of GST & Central Excise, Chennai -34  
and
2. Thiru Kurinji Selvaan V.S., M.Sc.(Agri.), M.B.A.,  
Joint Commissioner (ST) / Member,  
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

**ORDER No.20 /ARA/2020 Dated 24 .04.2020**

GSTIN Number, if any / User id		33ABAPV7712P1Z7
Legal Name of Applicant		Rajesh Rama Varma
Registered Address / Address provided while obtaining user id		Tower-5, 403 Sky Dugar, Rajan Kuppam Road, Chennai, Tamil Nadu. 600 095.
Details of Application		Form GST ARA – 001 Application SI.No.50 Dated 10.12.2019
Concerned Officer		State: The Assistant Commissioner(ST), Ashok Nagar Assessment Circle, Commercial Taxes Buildings, (Annexure) 5 <sup>th</sup> Floor, Greams Road, Chennai-600 006. Central: North Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service providers
B	Description (in brief)	
Issue/s on which advance ruling required		1. Determination of the liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required		a. Type of Service (Export or domestic) b. Tax Liability Determination. c. Admissibility of Refund on Taxes Paid

**Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.**

**At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.**

Shri. Rajesh Rama Varma, Tower-5, 403 Sky Dugar, Rajankuppam Road, Chennai, TamilNadu 600 095. (hereinafter referred to as 'Applicant') is a sole proprietary concern registered under GST Act with GSTIN: 33ABAPV7712P1Z7. The Applicant has preferred an application seeking Advance Ruling on the following Question:

- a. Whether the services provided by the applicant to the foreign client through the Principal shall be treated as export of services as the final services claimed by the Principal is in the nature of export of services.
- b. If the services are treated as export of services if so whether he is eligible to claim the taxes paid towards such export of services as refund.
- c. Whether the payment of fees received by him in INR from the Principal shall be treated as Export Remittance as the Principal is receiving the export proceeds in his account based on which the payment is made to him in INR keeping in view the various judgments in the matter cited above.
- d. Whether he can raise invoices with IGST taxes instead of CGST +SGST going forward for claiming refund.
- e. Any consequential relief or directions if any as deemed fit.

The Applicant has submitted the copy of application in Form GST ARA - 01 and submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under Sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that he is engaged in the business of providing IT software related consulting services in the area of Oracle ERP w.r.t Oracle Financials. The major services provided by him broadly include implementation, enhancement, support services and any other services that fall within the ambit of the Oracle Financials sphere. The services provided by him currently are covered under the SAC (Service Accounting Code) 998313. These services are being provided by him to both Indian and Foreign clients requesting the services. In Jan 2019, he entered into a contract with a GST registered IT Company in India providing similar Oracle services (hereinafter referred to as 'Principal'). As part of the Contract his role was that of a Consultant to provide support services to the Oracle ERP owned by the US client based out of Boston. The original contract was between the Principal and the US client and a part of the service was contracted to him. As per the terms of the contract, the consultancy fee for his services was decided to be billed on an hourly basis in USD of \$33.90 per/hr. The fee was decided to be paid in equivalent INR based on the conversion rate of INR/USD on the average prevailing rate of the last 3 month. The GST taxes would be charged separately while raising the invoice by him on the Principal. The contract is currently in force and valid till December 2021.

2.2 As part of the service obligation on the contract he was required to undertake the following activities on a monthly basis.

- Provide the support services directly to the US client from the office premises of the Principal
- Timesheet on the hrs. worked during the month to be provided monthly to enable billing the US client
- The details of the time sheet so provided was consolidated with the timesheet provided by the other employees of the Principal working on the project and an invoice was raised in USD on the foreign client.
- The Principal was availing the benefit of Export of services and filings claim accordingly with the GST authorities.
- At the end of the month he was provided with the Billing in USD and equivalent INR value by the Finance department of the Principal, based on which he used to raise invoice on the Principal in INR terms with GST @18% (9% CGT + SGST@9%) separately.
- Post submission of the GST invoice at the scheduled date GST Return for tax payment and return were filed by him.

2.3 The applicant has further stated that as part of his contract, support services are being provided directly to the US client by him on behalf of the Principal. The contract contains consulting fees paid on hourly basis in USD whereas payment is being made to him in INR. Every month the finance department of the Principal provides the USD amount and the equivalent calculated INR amount for which an invoice is raised by him. GST is charged separately on this Invoice so raised. He pays the GST on a monthly basis and file his GST returns on a quarterly basis.

2.4 On the interpretation of the GST rules in force, the applicant has stated that the place of Principal supplier is in Chennai, Tamilnadu where it is registered and his consulting services is also provided out of Chennai, Tamilnadu where he is also registered. The services provided to the foreign supplier are treated as Export of Services and accordingly the Principal is availing the benefit of export under IGST Rules. The applicant is also providing the services directly to the foreign client by paying GST under CGST and SGST through the Principal. A plain reading of the definition of 'agent', 'supplier' and 'Principal' amply makes it clear that his role is that of a agent when discharging his services to the foreign client representing the Principal as an agent.

2.5 "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 meaning of supplier covered under the definition of export of services above in 2(6)(i)-(iii) includes the agent as well. So by extension conditions (i), (ii) and (iii) are already fulfilled in his case as the Principal is availing the benefit of Export of Services. Conditions 2(6)(iv) in the definition above refers to payment for the services rendered has to be received in Convertible Foreign Exchange. In the real world of business there are entities who export service and bill the services rendered in INR and receive INR as consideration. Under the Foreign Exchange Management Act it is provided that if the payment in India rupees is received in India through banking

channel it is deemed to be convertible foreign exchange. In the present case the Principal is claiming export of services and a part of the services is being provided by the applicant directly to the foreign client. The payment is received by the principal in USD from the foreign client. The contract between the applicant and the Principal is in USD , but payment is made to me INR. The applicant has relied on the following case laws passed by CESTAT on similar issues in the erstwhile Service Tax Act where the question of inward remittance for export proceeds in INR was dwelled at length and decided to be treated as receipt of payment in convertible foreign exchanges.

1. National Engineering Industries Ltd. Vs Commissioner of Central Excise, Jaipur (CESTAT Delhi)- CESTAT (815) CESTAT Delhi (278)- Final Order No. ST/456 of 2011
2. M/s. Support.com India Pvt. Ltd. v/s The Commissioner of Service Tax Commissionerate-II ( Bangalore)-ST/20175 to 20184/2017-SM; ST/ 20914/2016

3.1 The applicant was extended an opportunity to be heard in person and the applicant was heard on 28.01.2020. The applicant submitted further submission, in which he has modified the questions asked in the application. It was informed to the applicant that the questions raised in the original application are not covered under section 97(2). The applicant has asked to modify to include whether the supply of services by the applicant are liable to GST under Section 97(2)(e). The applicant has submitted that he is supplying services to IRM.; he is raising tax invoice to Doyen Systems Pvt. Ltd but not to IRM.; He does not have any contact with IRM nor receiving any payment took from IRM. As proof of providing services to IRM, he provided time sheets that he provides to Doyen Systems. He stated that he only communicates to IRM for ERP support services for oracle but not on administrative issues. He requested for a ruling to determine the application on the question of GST liability on the service he provides.

3.2 In the submission made during the personal hearing, the applicant has furnished copies of the Contract between himself and Doyen Systems(Exhibit-I); Copy of the Timesheet for 3 months (Oct-19 to Dec-19); Copy of the Mail Correspondence evidencing billing details provided monthly by Doyen Systems for the three months (Oct 19 to Dec 19) and Copy of invoices raised by him on Doyen Systems for the consulting charges for the three months (Oct 19 to Dec 19). The applicant has elaborated the Nature of Contract, Nature of Service, Receipt of Service and

Consideration for the services provided in the context of his application. The applicant, further quoting various definitions and provisions relating to supply, consideration, principal, agent, recipient, export of service and place of supply, has stated that in the present case, the support services are provided by him to the US based client directly and therefore the liability for payment of consideration is also on the foreign client being the recipient of the services. This is evident from the fact that the timesheet evidencing the hours worked for the client are approved by them which indicates that the payment arising on account of such services is cast on the foreign client to be discharged by them. However, since the contract of the foreign client is with LOCAL COMPANY, the payment due to him is routed through LOCAL COMPANY. LOCAL COMPANY on its part provides him the details of the USD amount due to him as part of the billing process which indicates a one to one relationship between the discharges of the dues by the foreign client in USD for his services. Such a scenario is also envisaged in the definition of consideration detailed above under the GST Act when it states under the definition of consideration that the payment can be discharged by the recipient or by any other person. In the present case, the payment is due from the US client and remitted to LOCAL COMPANY and LOCAL COMPANY in turn remits the amount to me in INR. Since the payment from US client is received in USD into the account of LOCAL COMPANY the conditions provided under 6(iv) is satisfied.

4. The applicant is under the administrative control of State and the State Tax Officer vide letter RC.40/2020/A3 dated 07.02.2020 has furnished the comments on the application filed by the applicant. The said authority has reported that no Show Cause Notice/or Adjudication on the issues raised is pending with them. Also, the State tax officer has opined that the service provided by the applicant would be an intrastate supply of service to the company in terms of Section 8 (2) and Section 12 (2) (a ) of the IGST Act read with Section 2 (93) (a) of the CGST/TNGST Acts and the applicant is liable to pay GST.

5. The Central Tax authority has also furnished their comments vide their letter C.No. IV/16/14/2018-GST Pol Vol II dated 13/02/2020 wherein it is opined that the supplies made by the applicant fall within the ambit of domestic supply and are governed as per Section 12 of the IGST Act 2017 and therefore the applicant is liable to pay GST.

6.1. In view of the above the applicant has raised the following modified questions in his submissions dated 28.01.2020:

1. Whether the services provided by the applicant shall be treated as local services or export of services
2. Whether the applicant is liable to pay GST on such services provided to the US Client directly
3. Whether the benefit of zero-rated supply can be availed by him for his services
4. Whether he is eligible for refund of taxes already paid in the past if the refund is within the time limit provided under the GST Act.

6.2 The definition of 'advance Ruling' under section 95(a) of CGST/TNGST Act is given below for ease of reference,

*(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*

Section 97(2) of the CGST Act / Tamil Nadu GST Act (TNGST) gives the scope of Advance Ruling Authority, i.e., the question on which the Advance Ruling can be sought. For ease of reference, the section is reproduced as under:

*97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—*

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

The Act limits the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2) and no other issue can be decided by the Advance Ruling Authority. Of the above questions on which ruling is sought by the applicant, the question Sl . No 2 is alone covered under Section 97(2) above. This position was explained during the personal hearing also. The applicant during the hearing has requested a ruling to determine the application on the question of GST liability on the services he provides and the same is taken up for consideration.

7.1 We have carefully considered the various submissions made by the applicant, the comments offered by the Central Tax Authority and the State Tax Authority. The applicant has stated that he is engaged in the business of providing IT software related consulting services in the area of Oracle ERP w.r.t Oracle Financials. It is seen from the Contract between the applicant and Doyen systems Private Limited., that Doyen is a provider of software services in Oracle domain. Doyen has entered into agreement to utilize professional and consultancy services. Though the agreement does not elaborate on what such services are , it can be understood that they relate to the expertise of the applicant in the area of Oracle ERP software related services. The 'compensation' is agreed to be in the form of 'Consultancy fee' to be paid on submission of Invoice and is subject to TDS Deduction. The consulting service charges are to be billed at a fixed rate of USD 33.9 with a conversion into INR specified. The rate is called 'IRM New Rate'. Further, the contract specifies that 'All payments are subject to approved invoice and client time sheet'. The contract does not specify which client . From the invoices raised by the applicant for the months of October and November, it is seen that the invoices are raised on Doyen with description of ' Oracle EBS IRM Support Professional & Consulting' in INR . From the Time sheet for the months of Oct-19 and Nov-19, e-mail correspondences relating to the billing, it is seen that the applicant has been interacting with the employees of IRM, USA of the applicant states is the client of Doyen, the copy of the same is not furnished before us.

In the above factual position, the following emerges

- M/s. Doyen Systems has entered into a contract with foreign client to provide software support services to the ERP applications
- M/s. Doyen Systems has entered into a 'Consultancy agreement' with the applicant, by which the applicant is obligated by Doyen systems to provide 'Professional and Consultancy services'
- The consultancy charges are agreed on hourly basis in USD and the payment is made in Indian Rupees with the conversion rate averaged

7.2 The contention of the applicant is that he, having directly rendered service to IRM USA and having been paid a consideration by the Indian company on account of those services, be treated as having made a supply of export of services as the clients themselves are the recipients of his services and the consideration is paid over to him only on the approval of the said clients and that though the payment is received in



rupee equivalent, the actual contracted rate is in US Dollars, based on which the billing is also made.

**Section 2(93) defines 'recipient' as:**

*(93) "recipient" of supply of goods or services or both, means— (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration; (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.*

**In terms of section 2 (5) of the CGST/TNGST Acts,**

*(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;.*

In the instant case, as already brought out, there are two sets of contracts, one between Doyen Systems and its clients providing for software support services to be rendered by them and the other between Doyen Systems and the applicant providing for professional and consultancy services to be rendered by the applicant. The applicant is not a party to the first contract nor is he privy to it. Doyen systems have engaged his services as a consultant. In the instant case there is a consideration, for the services rendered by the applicant to Doyen which the applicant states is quantified based on the number of hours specified in the time sheet , that he works with the employees of IRM , USA , which is the client of Doyen. In fact, even the time-sheet is not forwarded by the applicant directly to the foreign clients for their approval but only to the company which then verifies the claims with the clients for genuineness and then makes the payment for the services rendered by the applicant. . The foreign clients pay the consideration to Doyen Systems as per the independently agreed upon contract value which has no relevance or reference to the contract that the applicant has with the company. As far as the clients are concerned, the services are provided by Doyen systems only. In terms of the contract entered into with the

applicant, Doyen systems is liable to pay the consideration; the foreign client is not obliged to make any payment as consideration to the applicant. In case of any payment default, the applicant can lay a claim only against the company and not against the foreign client. Thus the applicant provides services as a 'Consultant' engaged by Doyen Systems and hence the receiver of service in this case is Doyen Systems as per definition in Section 2(93) (a).

Further, the applicants contention that he is an 'agent' of Doyen and in that capacity providing services to clients of Doyen is not substantiated by any documentary proof that the applicant is the representative of Doyen while dealing with their clients.

There is also no mention anywhere in the consultancy agreement that the applicant has to provide services to the clients of Doyen. Merely because , the applicant is in email correspondence with the employees of clients of Doyen does not mean that he is 'carrying on the business of supply of services' on behalf of Doyen, as is required as per definition of 'agent' in Section 2(5).

Thus, the applicant is providing services to Doyen and not to their clients either directly or as an agent.

7.3 It is now required to decide the applicability of GST to the services provided to Doyen by the applicant.

**Section 7 of CGST/TNGST Act states:**

*7. (1) for the purposes of this Act, the expression "supply" includes—*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(b) import of services for a consideration whether or not in the course or furtherance of business; and*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*

*(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.;*

**Schedule II states:**

**5. Supply of services**

The following shall be treated as supply of services, namely:—

(d) development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;

In the instant case, the applicant provides IT software related consulting services in the area of Oracle ERP w.r.t Oracle Financials to Doyen for a consultancy fee laid down in the consultancy agreement. Therefore, the said activity satisfies the conditions of Section 7(1)(a) and is a supply under GST. As per Para 5 of Schedule II read with Section 7(1A), this supply is a supply of services. Therefore, the applicant is liable to pay GST at appropriate rates on the supply of consultancy services to Doyen.

7.4 In respect of the questions whether, such supply of services is 'export of services', 'zero-rated supply' and eligibility of refund, this authority cannot answer the questions as they are not covered in Section 97(2) of the CGST/TNGST Act.

8. In view of the above, we rule as under

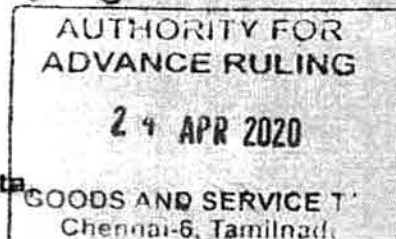
**RULING**

1. The services provided by the applicant to Doyen systems Private Limited is a supply of services under CGST /TNGST Act and the applicant is liable to pay relevant tax on such supply.
2. The other questions raised are not answered as the same is not in the ambit of this authority as per Section 97(2) of the Act.

K. Manasa  
Gangotri

Shri Kurinji Selvaan, V.S.  
Member, TNGST

Ms. Manasa Gangotri Kata  
Member, CGST



To

M/s. Rajesh Rama Varma  
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TamilNadu

**// By Speed Post with Ack due//**

Copy submitted to:-

1. The Additional Chief Secretary / Commissioner of Commercial Taxes,  
2<sup>nd</sup> Floor, Ezhilagam, Chepauk, Chennai – 600 005.
2. The Principal Chief Commissioner of CGST & Central Excise,  
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch – 600 034.

Copy to:

3. The Commissioner of GST & Central Excise., North Commissionerate,  
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4. The Assistant Commissioner (ST)  
Ashok Nagar Assessment Circle,  
Commercial Taxes Buildings, (Annexure)  
5<sup>th</sup> Floor, Greams Road, Chennai-600 006.
5. Master/ Spare.