

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 31 / 2021
Date : 01-07-2021**

Present:

1. Dr.M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri.Mashhood Ur Rehman Farooqui,
Joint Commissioner of Customs & Indirect Taxes, Member (Central)

1.	Name and address of the applicant	M/s Airbus Group India Private Limited 4 & 4A, XYLEM, 4 th Floor, Dyavasandra Industrial Area, Mahadevapura Post, Bengaluru - 560048, Karnataka.
2.	GSTIN or User ID	29AAGCA1513R1ZD
3.	Date of filing of Form GST ARA-01	14-10-2020
4.	Represented by	Sri K J Shah, C A & Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Indirect Taxes, Bangalore East Commissionerate, Bengaluru
6.	Jurisdictional Authority - State	LGSTO-35 A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs. 5,000/- under KGST Act through transfer from cash ledger, under rule 87(14) of CGST Rules 2017.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
AND UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s Airbus Group India Private Limited, (hereinafter referred to as '**the Applicant**' or '**Airbus India**' or '**the Company**'), 4 & 4A, XYLEM, 4th Floor, Dyavasandra Industrial Area, Mahadevapura Post, Bengaluru - 560048, Karnataka having GSTIN 29AAGCA1513R1ZD, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of CGST Rules 2017 and Section 97 of KGST Act, 2017 read with the KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST



2. M/s Airbus Group India Private Limited was incorporated on February 6, 2007 as a Private Limited company under the provisions of erstwhile the Companies Act, 1956. The applicant provides engineering design and other technical advisory services which include marketing support, customer support services, flight maintenance training, flight operations supports, flight pilot training, etc. They also provide maintenance, repairs and overhaul services, agency services, renting of assets and trading of spares and parts of Helicopter.

3. The applicant submitted the following with regard to **Overview of Airbus group operations & its global sourcing footprints.**

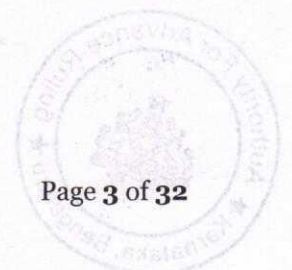
- a) The Applicant is operating as a subsidiary of Airbus Invest SAS, France ('Holding Company'), and its ultimate holding company is Airbus SE, Netherland. Globally, Airbus Group is an international pioneer in the aerospace industry and is a leader in designing, assembling and delivering aerospace products, services and solutions to its customers on a global scale.
- b) Airbus Group has its presence worldwide and operates from over 130 nations of the World. Its manufacturing and final assembly line facilities are located in various countries such as France, Germany, Spain, United Kingdom, the United States and people's Republic of China.
- c) Airbus Group procures parts or components or services which are required for its manufacturing operations ((i.e. aerospace products and final assembly lines (i.e. Aircrafts, helicopters etc.)) are generally sourced from both domestic and international markets including Indian market, since such a sourcing strategy ensures competitive advantages to Airbus Group while ensuring the on-time and on-quality delivery of a product to the final customers as well as in providing best value to its customers.
- d) For sourcing various goods and services, Airbus Group is dependent on numerous key suppliers and subcontractors to provide it with the raw materials, parts, assemblies, systems, equipment and services that it needs to manufacture its products. Over the years, its global sourcing footprints has expanded across the globe including North America, South America, Europe, Africa, Middle East, and other Asia-pacific regions including India.
- e) Additionally, to promote further globalisation of its sourcing footprint, Airbus has established regional offices across multiple countries such as North America, China & East Asia and India.

4. The applicant submitted the following with regard to **Airbus Group global sourcing strategy and the agreement entered with its regional entities for obtaining support services in relation to its global procurement / Sourcing strategy.**



- i. As a part of its global sourcing strategy, Airbus Group has a specialised global sourcing team which is responsible for formulation and implementation of entire group sourcing strategies which in turn achieves the overall objectives of the group and making it competitive. The said global sourcing team is responsible for sourcing of the products from various International markets.
- ii. Currently, the entire procurement / sourcing strategy of Airbus Group is monitored and reviewed by its group entity located in France (i.e. Airbus SAS, France). The said entity co-ordinates with its other group entities located across the globe and obtains the market intelligence, information of suppliers, supplier compliances to local laws and regulations, information of product or services and its quality standards, information on supplier production facility etc., while formulating and implementing a sourcing strategy for its entire group procurements of various goods and services.
- iii. Aforesaid sourcing strategy aids Airbus Group in ensuring better economies of scale, ease of global manufacturing operations and in market competition. In line with said objectives, Airbus SAS, France ('Airbus SAS') has entered into an 'Intra-Group Services Level Agreement' with Airbus India. The copy of the said agreement is enclosed as **Annexure 1 to this application**.
- iv. Under the said agreement, Airbus India would primarily assist Airbus SAS by carrying out certain support functions / activities in relation to its global procurement strategy which includes carryout review of Indian supplier landscape, continuous update of supplier operations, conducting supplier onsite assessments, promote awareness of Airbus Group ethics and compliance guidelines, report any unethical practices of suppliers (if any), reporting on supplier compliances to local laws and regulations, providing market information, sharing information of product or services and its quality standards, information on supplier production facility, etc.
- v. The detailed activities or functions agreed between the parties under the said agreement are discussed in detail in the ensuing paragraphs:
 - a. As per the agreement entered between the said parties, the support services rendered by Airbus India in connection with group global sourcing strategy are broadly classified under the following categories / functions:
 - A. Procurement Operations (PO) function;
 - B. Procurement Transformation & Central services (PY) function;

A. Procurement Operations (PO) function:



Under the said function, the applicant renders various technical advisory and business support services in relation to supplier development activities which includes the activities such as:

A.1.1. Based on Airbus SAS guidelines received in connection with Generic Supply-chain and Quality requirements for suppliers, the applicants conduct onsite assessments on and even monitor the performance of various suppliers approved by Airbus SAS under the supplier development program. Post the said assessment, Airbus India shares a report with Airbus SAS covering the following attributes such as:

- Supplier business performance and its maturity development status
- delivery and quality performance of the supplier nominated under the program
- product quality and production performance
- Surveillance audit of the supplier
- evaluation of the risk of the supplier
- risk benefit analysis in connection with new SP strategy
- implementation of Advanced Product Quality Planning (APQP)
- Market situation in India and its Neighboring countries etc.,

A.1.2. The Applicant provides support to various suppliers nominated under the supplier development program by Airbus SAS in their various operations such as running activities, recovery, transfer of work (ToW), and assessments in align with Airbus group agreed quality standards and processes;

A.1.3. Airbus India has agreed to render its technical advisory support so as to improve the supply chain facility of the supplier by way of continuous onsite assessment, review, and diagnosis.

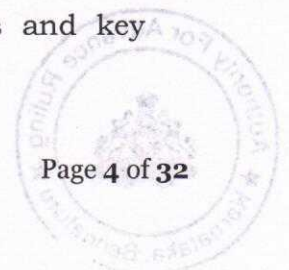
A.1.4. Airbus India has agreed with Airbus SAS to provide a continuous update and information on supplier operations, industrial maturity, performance etc.

A.1.5. In addition to the above, Airbus India has agreed to carry out risk review from Indian supplier landscape while assessing impact on Airbus programs and update the information to Airbus group at agreed time intervals;

B. Procurement Transformation & Central services (PY) function:

Under the above function, the applicant renders the support services in relation to the areas such as:

- Procurement Ethics & Compliance, procurement process and key projects management;



- Strategy, Business Intelligence ('BI'), and Digital procurement;
 - Flying part procurement;
 - General procurement;
- B.1.1. As per the standard process and guidelines received from Airbus SAS, the Applicant conducts necessary audit and verify whether all the procurement activities are being carried out in adherence to the defined standards established by Airbus SAS;
- B.1.2. Airbus India has agreed with Airbus SAS to promote awareness of Airbus ethics and compliance guidelines amongst the suppliers approved and nominated by Airbus SAS;
- B.1.3. Airbus India to identify and report any unethical or non-compliant behavior / activity in the supply chain, but the decision of continuing the relationship and procurement from such supplier is vested with Airbus SAS;
- B.1.4. Airbus India to provide necessary guidance to key projects within procurement and report any non-compliance;
- B.1.5. Airbus India to assist Airbus SAS in building development strategy framework, goals & roadmap for procurements related activities from Indian region;
- B.1.6. Airbus India to provide guidance in developing strategic initiatives, identify opportunity/ Computational Fluid Dynamics ('CFD') analysis & support in business development in order to meet business goals of procurement in India;
- B.1.7. Airbus India to provide information relating to the business and market intelligence about procuring from the Indian region and to assist in value chain analysis, & maintaining updated information database;
- B.1.8. Airbus India to assist Airbus SAS in identifying and accessing the local capabilities in Indian region and provide necessary guidance to local vendors and update them about product changes and expectations;
- B.1.9. Airbus India to provide its support to Airbus SAS during RFP/RFI process, but excluding any commercial and contractual negotiations with Indian suppliers will be carried out independently by Airbus SAS;
- B.1.10. Under the aforesaid agreement, the role of Airbus India is limited only to review the potential supplier, his operations, operations / quality standards and report its observations and provide relevant



expertise from time to time to Airbus SAS. Airbus India does not have any role or right or decision in the following activities and the ultimate right / management decision vests with Airbus SAS:

- to confirm the identified / potential supplier from whom the products may be sourced,
- to communicate with the supplier about his selection;
- to sign a contract and place the order with the supplier identified;
- to issue purchase order and pricing of the product to be supplied;
- to agree on any terms and conditions of the supply;
- to receive and confirm on the production schedules sent by the suppliers identified;
- to understand any challenges faced by the selected suppliers in meeting the production schedules and communicated it to Airbus SAS.
- for payment to the suppliers;
- for any product or quality risk for the product supplied by the identified / potential suppliers;
- for any potential financial risk or loss of the supplier identified;
- in any litigation risk associated with the supplier identified;

5. The applicant submitted the following with regard to **Other key contractual terms agreed between Airbus India and Airbus SAS.**

- a) As per the provisions of aforesaid agreement entered between the parties, the support services as enunciated above are rendered on principal to principal basis between Airbus India and Airbus SAS. For the said services rendered, Airbus India would be remunerated with a service fees computed on *cost plus markup* (at such percentage as agreed between the parties) basis.
- b) Further, it is made clear in the aforesaid agreement that the relationship between Service Provider and Beneficiary shall be on a principal to principal basis.
- c) The agreement specifically restricts Airbus India to decide or select any supplier and agree upon the terms and conditions of the supply. Further, the said decisions are vested and prerogative of Airbus SAS.
- d) Additionally, it is even agreed between the parties that Airbus India will not be responsible for issuance of purchase order or payment for the supply made by the vendor.

6. The applicant submitted the following with regard to **Summary of the above contractual terms agreed between Airbus India and Airbus SAS for easy reference and understanding:**



- i. Given the backdrop of above discussion, the predominant support activities / functions undertaken by Airbus India are provided below for ease of reference:

Support services rendered by Airbus India to Airbus SAS under the agreement:

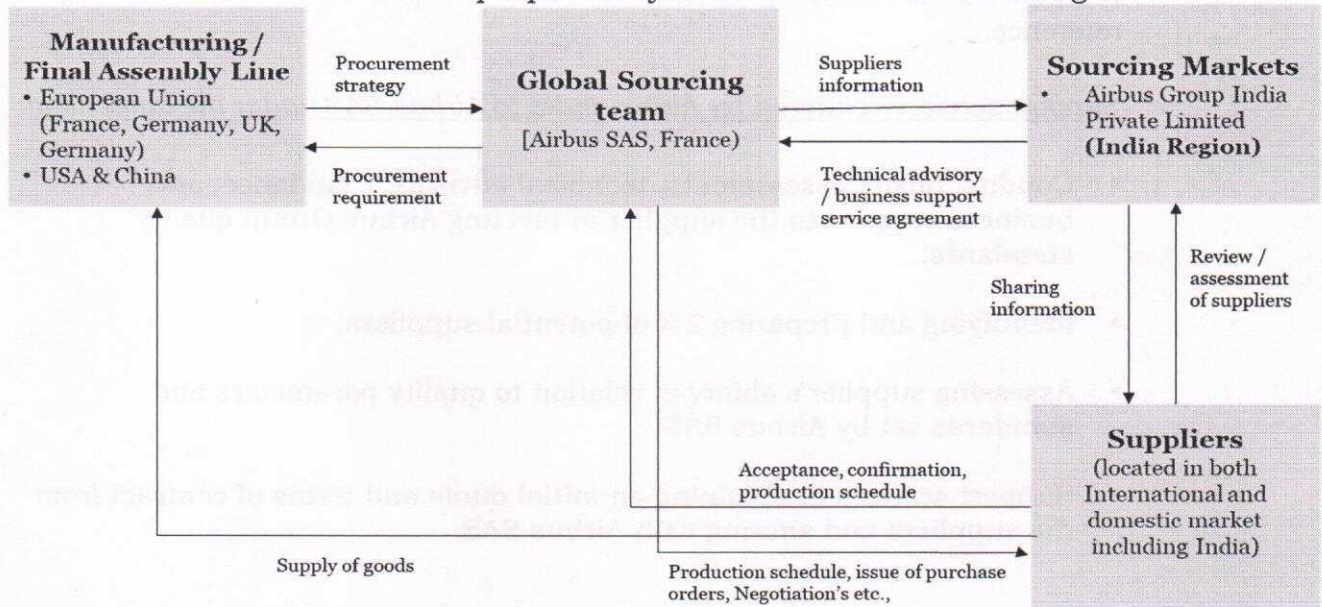
- Conduct onsite assessments, technical advisory / guidance, and business support to the supplier in meeting Airbus Group quality standards;
- Identifying and preparing list of potential suppliers;
- Assessing supplier's ability in relation to quality parameters and standards set by Airbus SAS;
- Support services in obtaining an initial quote and terms of contract from the suppliers and sharing with Airbus SAS;
- Review of the suppliers selected by Airbus SAS performance & production quality in terms of adhering to the production schedule shared by Airbus SAS and understand the challenges, if any;
- providing continuous update of the supplier operations to Airbus SAS;

Services / activities specifically excluded under the agreement from the purview of Airbus India:

- Decision of continuing the relationship and procurement with supplier who has been identified or reported for any unethical or non-compliant behavior / activity in the supply chain, since the same is vested with Airbus SAS;
- Deciding the supplier from whom the merchandize will be sourced;
- Communication to supplier about his selection;
- Reviewing of quote obtained and terms of contract from the suppliers and discussion with supplier;
- Negotiating with the supplier, agreeing on the terms and conditions;
- Signing a contract / issuing purchase order and placing request for supply;
- Sharing the production schedule with the supplier;
- Payment to the suppliers;



ii. A brief snapshot of global procurement strategy of Airbus Group is depicted below in flowchart for the purpose easy reference and understanding:

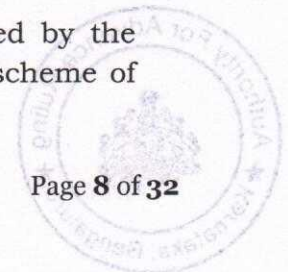


7. The applicant submitted their **INTERPRETATION OF LAW** with regard to their question **“Whether the activities carried out in India by the Applicant would constitute a supply of "Other support services" falling under HSN code 9985 or as "Intermediary service" classifiable under HSN code 9961/9962 or any other classification of services as specified under various Tariff entries of rate notification issued under Goods and Services Tax law?”**, as under:

7.1 From the facts mentioned above (Exhibit 1) and the agreement entered between the parties, it is clearly evident that the Applicant is involved in rendering various services which are in the nature of professional, technical and business support services to its Customer. The services primarily rendered by the Applicant includes:

- conducting supplier onsite assessments at regular intervals;
- promote awareness of Airbus Group ethics and compliance guidelines, and to report any unethical practices of suppliers (if any);
- reporting on supplier compliances to local laws and regulations,
- providing market information, sharing information of product or services and its quality standards, information on supplier production facility etc.;
- continuous update of supplier operations;
- carrying out certain support functions / activities in relation to its global procurement strategy which includes carryout review of Indian supplier landscape;

Under the Goods and Service Tax Law, the said activities rendered by the Applicant are squarely covered under the following service code / scheme of classification of service:



Chapter, Section, Heading or Group	Description of Service in the Tariff Entry
9983	Other professional, technical and business services

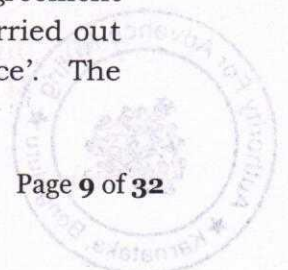
7.3 In the current context, the above classification holds merits owing to reason that the activities rendered by the Applicant is essentially comprises of providing technical expertise, advisory support and operational assistance mainly concerning important areas of procurement such as products standards, advanced quality planning with respect to raw materials, capex requirements, processes to be carried out, information on supplier landscape, their operations, capabilities, market conditions, etc., in order to meet the Airbus group agreed procurement quality standards, processes and strategy.

7.4 In addition to the above submission and without prejudice to any other view by your kind authority, the Applicant would wish to submit that the activities rendered by them cannot be classifiable under the following service codes / scheme of classification of services on those reasons as discussed in subsequent paragraphs:

Chapter, Section, Heading or Group	Description of Service in the Tariff Entry
9985	Other support services
9961	Services in wholesale trade
9962	Services in retail trade

7.5 The classification entry (i.e. "9985 - Other support Services") may not be applicable in the given context, since the services / activities rendered by the applicant are more specifically covered under the heading 9983 - Other professional, technical and business services. Moreover, the service code 9985 covers only general business support services and excludes services in relation to technical advisory and business support services from its ambit. However, in the given situation, since the services rendered by the Applicant are predominantly in the nature of technical advisory, professional, and business support services, the activity merits classification of heading 9983 rather than 9985.

7.6 The activity rendered by the Applicant even does not merit classification under the heading of 9961 & 9962, since the said classification is applicable only if the activities are in the nature of 'Intermediary service'. However, in the given context, considering the facts mentioned in Exhibit 1 and agreement entered between the parties, it is clearly evident that the activities carried out by the Applicant do not qualify to be termed as 'intermediary service'. The



detailed explanation in this connection has been elucidated in the subsequent paragraphs:

- 7.7 In order to understand whether the activities carried out by the Applicant (as described in the Exhibit - 1) would fall under the ambit of the term 'intermediary services' as contemplated under GST Law; it is essential to analyze the definition of 'intermediary' as provided under clause 13 of Section 2 of the IGST Act, 2017 with effect from July 1, 2017. The relevant extract of the definition is reproduced below, for easy reference:

"2. (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;"

- 7.8 On perusal of the above definition of "Intermediary", it can be noted that the definition consists of the following three major limbs:

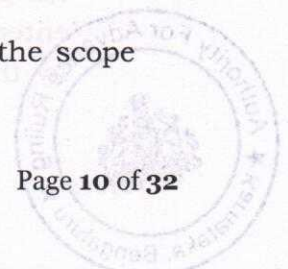
- a. Person should be a broker, an agent or any other person, by whatever name called;
- b. Person should *arrange* or *facilitate* the supply of either goods or services or both, or securities – between two or more persons; and
- c. It does not include the person who supplies the goods or services or both or securities on *his own account*.

- 7.9 The applicant with regard to **Concept of 'agent' and 'broker' – first limb of 'intermediary' definition**, submitted as under:

In order to understand whether the person qualifies to be an 'agent' or a 'broker', it is imperious to understand the meaning of expression 'agent' or 'broker'. The term 'agent' is defined under clause 5 of Section 2 of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "**CGST Act, 2017**") and said provisions are made applicable to IGST Act, 2017 by virtue of provisions contained in section 20 of IGST Act, 2017:

CGST Act, 2017: In terms of clause 5 of section 2 *ibid*, 'agent' means *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.*

Judicial precedents under prior indirect tax laws while analysing the scope of the term 'agent' have held the following:



- Agency relationship is typically determined in light of the terms and recitals of the contract, intention of the parties (as apparent from the said contract) and the surrounding circumstances in the course of the dealings between the parties¹;
- An agent ideally should have control and possession over services provided by him on behalf of the principal and has the authority to provide the service on behalf of the principal, or contractually bind the principal *qua* any obligation to be fulfilled²;
- In cases where an agent merely canvasses the orders and forwards the same to the principal for acceptance and execution at the principal's discretion, the privity of contract is between customer and principal. A person cannot be regarded as a commission agent, if it has no authority to buy or sell goods belonging to the principal³.

7.11 Further, the scope of principal-agent relationship under GST was discussed in circular 57/31/2018-GST dated September 4, 2018 where certain principles were laid down to determine who can be covered within the ambit of 'agent'. The Government has identified that the crucial component for covering a person within the ambit of the term "agent" under the CGST Act is corresponding to the representative character identified in definition of "agent" under the Indian Contract Act, 1872 ("Contract Act"). Therefore, it is pertinent to analyse the concept of agent under the Contract Act as follows: *"an 'agent' is a person employed to do any act for another, or to represent another in dealings with the third person. The person for whom such act is done, or who is represented, is called the 'principal'."*

7.12 On a joint reading of the definitions in section 182 of the Contract Act and section 2(5) of the CGST Act, two key elements to qualify as an 'agent' are apparent:

- 'Agent' is a person appointed to do any act for another, or to represent another, in dealings with a third person; and
- The supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.

7.13 The circular also states that the key ingredient for determining an agency relationship is that an 'agent' should have a representative character which enables him to carry out activities on behalf of the principal.



7.14 The term “broker” as used in the relevant definition, needs to be examined, as the GST provisions do not define this term.

7.15 On referring to **Legal dictionary – Law Lexicon**, the dictionary meaning of the term “**broker**” can be understood to mean a middleman or agent who, for a commission on the value of transaction, negotiates for others the purchase or sale of stocks, bonds, commodities, or property of any kind. Additionally, as per the **Black’s Law dictionary**, “**broker**” has been defined to mean an agent who acts as an intermediary or negotiator, especially between prospective buyers and sellers, a person employed to make bargains and contracts between other persons in matter of trade, commerce, or navigation.

7.16 The said terms have also been explained in the legacy indirect tax regime by which an additional insight can be obtained on who will be regarded as a ‘broker’ or an ‘agent’ and what sort of activities would be regarded as provided by an ‘agent’ or a ‘broker’:

- i) **Finance Act, 1994:** The terms ‘*broker*’ and ‘*agent*’ have not been defined in the Finance Act, 1994 (as applicable on or after 1st October 2014). However, under Section 65B(55) *ibid* it has been specified that any words and expressions used but not defined in Chapter V and defined in the Central Excise Act, 1944 or the Rules made thereunder are to apply *mutatis mutandis* in relation to Service Tax as they apply with respect to Excise Duty.
- ii) **Central Excise Act, 1944:** Under the said Act; the term ‘*broker or commission agent*’ was defined under Section 2(aaa) as ‘a person who in the ordinary course of business makes contract for the sale or purchase of excisable goods for others.’

7.17 Accordingly, on the basis of above analysis the characteristics of a ‘*broker*’ or a ‘*commission agent*’ can be summarized as below:

- a. Existence of a principal-agent relationship between the commission agent/broker and the buyer/seller.
- b. Making of a contract for purchase or sale of goods or provision of service for others i.e. between two or more persons; and
- c. Acting on behalf of another and causing the sale or purchase of goods, or provision or receipt of services, for a consideration (*for a commission agent*).

7.18 The applicant with regard to the expression ‘**any other person**’, submitted as under :



In this context, it is also important to understand the residuary category - any other person (by whatever name called) who facilitates or arranges supply of goods or services or both or securities between two or more person. The said expression may be understood with the aid of interpretational rules, specifically by application of **rule of ejusdem generis**, with which the expression "any other person" provided in the definition of intermediary may be interpreted to mean and include only the person having the same class as broker or agent. Accordingly, the above characteristics explained for a 'broker' or a 'commission agent' would be equally applicable even to expression 'any other person' and anyone who satisfies such characteristics are included in the said expression.

7.19 The applicant submits that the following conclusions may be drawn on applying the various aspects of law discussed above.

a) As per the facts mentioned in Exhibit - 1, it may be noted that the activities performed are in the nature of technical advisory and business support services and not of intermediary services. Further, the support services rendered by Airbus India could be characterized as business support services or functions which are performed or rendered on their own account and not as an intermediary.

b) Additionally, since the services rendered by the Applicant are in the nature of technical advisory and business support service, it is not involved in any of the commercial decisions mentioned below and all such responsibilities / decisions are completely vested with Airbus SAS:

- accepting a supplier;
- agreeing the price;
- deciding on the terms and conditions of the contract;
- issue of purchases order/placing order;
- accepting the invoice of supplier and making the payment etc.;

Accordingly, it is conclusive to note that the services rendered by the Applicant do not fall within the definition of intermediary services.

c) Also, the Applicant agreed to provide services on its own account and not on behalf of any other entities. Such services are provided on a principal-to-principal basis and not in the capacity of an agent or broker.

d) Technical advisory and business Support services provided by the Applicant to Airbus SAS are in the nature of auxiliary services and the Applicant at no point in time has any authority to negotiate or undertake any commercial decisions such as prices and other terms and to enter into/ conclude contracts, or to front end the bidding process, or provide the technical assistance for or on behalf of its Group Company; and



- e) The Applicant performance and remuneration received for such performance is in no way linked to the purchase prices. Further, as per the Agreement, the Applicant receives the remuneration of Service fees on a 'cost plus basis' (**cost plus markup**) for the services it renders. Accordingly, the nature of services provided by the services rendered by the Applicant shall not fall under the ambit of broker, since it is executing only **specific tasks** as per the agreement with Airbus SAS.
- 7.20 The applicant submits on the basis of the above discussions that it is evident that the Applicant cannot be regarded as an agent/ broker of Airbus SAS. Accordingly, the first limb of the definition of 'intermediary' is not satisfied by the Applicant.
- 7.21 The applicant with regard to "arrangement or facilitation of supply" submits that the expression '*arranges or facilitate supply*' as used in clause 13 of Section 2 of the IGST Act, 2017 means to organize or support or assist in any manner the supply of goods or services or both in such a manner that such supply between two or more persons becomes easier or more convenient.
- 7.22 On literal interpretation of the definition of "intermediary", it appears that there is a requirement of arrangement or facilitation of supply of goods and/ or services by an intermediary. This is because the definition contemplates two activities; the supply of goods and/ or services by one person and the provision of an 'intermediary service' by the intermediary to the said person.
- 7.23 The concept of a '*commission agent*' for goods and /or services has been specified to be a '*buying or selling agent*' and not merely a person providing '*support service*'. With respect to services, we may take reference of the erstwhile Service Tax Law (The Finance Act, 1994). The expression '*commission agent*' (prior to July 01, 2012) was grouped under the taxable service category of 'business auxiliary services' which referred to a person "*engaged in causing provision of receipt of services and in not merely marketing of services belonging to a principal*". Consequently, an 'intermediary', for all practical purposes can only be a person who **actually** arranges or facilitates a main service – and not merely a person who markets a product belonging to the seller.
- 7.24 In view of the above, it can be interpreted that '*an intermediary should mediate the actual supply of goods or provision of service a service vis-a-vis a prospective customer*'.
- 7.25 The applicant submits that based on the facts mentioned in Exhibit – 1, it is evident that at no point of time the Applicant would be carrying out any such activity which may be deemed to be a direct or indirect act of



'facilitating or arranging' a sale of goods or supply of services between Airbus SAS and identified suppliers. In other words, Airbus India providing support services which mainly include role limited to providing necessary information, review & advise from quality perspective and all the decision relating to following is the responsibility of Airbus SAS team and Airbus India does not have any role or authority:

- accepting a supplier,
- agreeing the price,
- deciding on the terms of the contract
- activities relating to issuance of purchases order/placing order,
- accepting the invoice of supplier and making the payment etc.

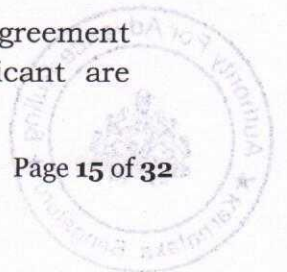
In view of the above, it is conclusively proved that the services agreed to be rendered by Airbus India does not fall within the definition of intermediary services.

7.26 Further, the Applicant submits that their functions are mainly to technical advisory, guidance and business support assistance services concerning with quality control standards, performance standards, safety standards of the suppliers and in no way is involved in either arranging / facilitation of supply. Also, the Applicant does not have any right to make procurement decisions including to enter into any negotiation of either contractual terms or products pricing on behalf of Airbus SAS with any prospective suppliers. Thus, it is evident that the Applicant is only providing technical advisory and business support services and not involved in either arranging or facilitating of any supply of goods or services between the Group companies and its prospective customers.

7.27 The applicant submits that consequent to above discussion, it can be connoted that the Applicant is neither involved in arranging nor facilitating the supply of any goods and/ or services between the Group Companies and its prospective customers, and thus, the requirement of second limb referred under the definition of the term 'intermediary' as per clause 13 of Section 2 of the IGST Act, 2017 is also not satisfied by the Applicant. Thus, the requirement of second limb referred under the definition of the term 'intermediary' as per clause 13 of Section 2 of the IGST Act, 2017 is also not satisfied by the Applicant.

7.28 The applicant with regard to third limb of intermediary i.e. 'acts on its own account' submitted that, the agreement entered between the Applicant and Airbus SAS clearly manifest that the Support services are rendered solely on its own account on a principal-to-principal basis.

The applicant further states that, the **Article 2.4** of the Agreement specifically expresses that the activities performed by the Applicant are



performed on a principal to principal basis and thereby makes it reasonably evident that the activities performed by the Applicant are in the nature of "business support services" performed on its own account and not as 'intermediary'. Thus, the requirement of third limb contained under the definition of 'intermediary' is also not satisfied.

7.30 The applicant, on the Basis of the above discussions states that, it is evident that the Applicant does not qualify as an 'intermediary' and consequently, its activities cannot be classified as 'intermediary services' for the purposes of levy of GST.

8 The applicant with regard to **Advancement of Revenue understanding on 'Intermediary' in the legacy Indirect tax regime – Educational Guide issued by the CBEC**, submitted as under:

8.1 It is imperious to highlight that the definition of '**intermediary**' provided under clause 13 of section 2 of IGST Act, 2017 is *pari-materia* to the definition provided under the Finance Act 1994. The Education Guide, 2012 issued by the CBEC *inter alia* provides the various factors that needs to be considered in determining whether a person is acting as an intermediary or not. The relevant extract is reproduced hereunder:

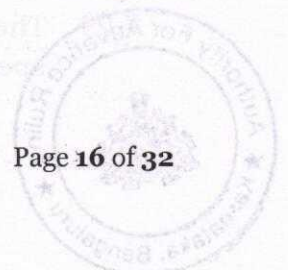
"Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is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

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

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

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':

- i) Travel Agent (any mode of travel)
- ii) Tour Operator
- iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
- iv) Recovery Agent



Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the ' main service''

8.2 On the basis of the aforesaid clarifications provided in the Education Guide, the following principles emerge:

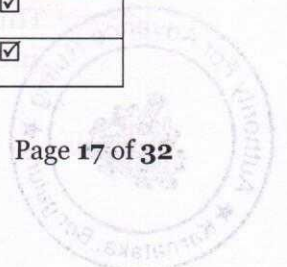
- An intermediary should be involved in two services at any one time -
 - (a) services between the principal and the third party; and
 - (b) services by an intermediary to the principal.
- An intermediary cannot alter the nature and value of service, the supply of which is facilitated on behalf of principal;
- The value of services provided by an intermediary is clearly identifiable from the main services provided by principal to the service recipient; and
- Intermediary should be separately compensated for its services and the fees is generally based on an agreed percentage of sale or purchase price

8.3 The examples of the categories of intermediaries referred to in the Education Guide are travel agents, tour operator, commission agent and recovery agent. ***And basis the above, it is clear that an intermediary plays a key role in the fructification of the contract for the provision of the primary service by the principal or in the ongoing performance of the service by the principal.***

8.4 An added trait of an intermediary is that an intermediary (such as travel agents, tour operator, commission agent and recovery agent) is remunerated based on the successful closure of a deal for provision (or arranging/ facilitating) of the main service/ goods.

8.5 In addition to above, the Applicant would wish to submit before your kind authority the following summary table which depicts the support activity that are undertaken by the applicant:

Sl. No.	Scope of work / activities	performed by the Applicant
	Market research & analysis	<input checked="" type="checkbox"/>
ii)	Identifying and preparing list of potential suppliers	<input checked="" type="checkbox"/>

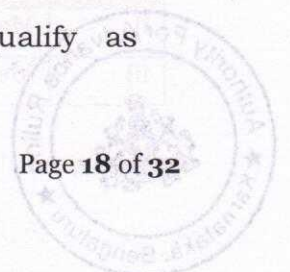


Sl. No.	Scope of work / activities	performed by the Applicant
iii)	Initial rescreening of potential supplier to check the ability to deliver the goods	<input checked="" type="checkbox"/>
iv)	Organizing & participating in seminars, events, fairs	<input checked="" type="checkbox"/>
vi)	Bidding process / Invitation to tender process	<input checked="" type="checkbox"/>
vii)	Negotiation of Pricing & Commercial decisions	<input checked="" type="checkbox"/>
viii)	Agreeing on the terms of the Contracts	<input checked="" type="checkbox"/>
ix)	Involvement in procuring orders	<input checked="" type="checkbox"/>
x)	Co-ordinate for shipment of goods between parties	<input checked="" type="checkbox"/>
xi)	Co-ordinate for payments between parties	<input checked="" type="checkbox"/>
xii)	Commission linked to main supply	<input checked="" type="checkbox"/>
xiii)	Assistance in technical support	<input checked="" type="checkbox"/>
xiv)	Communicating the complaints to the Suppliers / Airbus SAS	<input checked="" type="checkbox"/>
xv)	Resolving the complaints and post-sales activities of the supplier	<input checked="" type="checkbox"/>
xvi)	Review of supplier performance including quality standards	<input checked="" type="checkbox"/>
xvii)	Providing technical advisory to the suppliers in relation to meeting quality standards	<input checked="" type="checkbox"/>
xviii)	providing continuous update of the supplier operations to recipient	<input checked="" type="checkbox"/>
xix)	Communication to supplier about his selection;	<input checked="" type="checkbox"/>
xx)	Signing a contract / issuing purchase order and placing request for supply	<input checked="" type="checkbox"/>

8.6 Considering the above discussions, the Applicant should not be regarded as an 'intermediary' for the following reasons:

- (a) The Applicant is providing services to Airbus SAS on its own, and there is no contract between Airbus SAS and the suppliers for provision of any service. Thus, the question of the Applicant facilitating the supply between the principal and third party does not arise;
- (b) The Applicant is remunerated with service fees computed on a cost-plus markup basis which demonstrates that the Applicant is not an intermediary as intermediaries are remunerated on the basis of successful closure of deal and with commission.
- (c) The Applicant is providing services on a principal-to-principal basis as an 'independent contractor'.

Thus, the services provided by the Applicant shall not qualify as 'intermediary service'.



9. The applicant with regard to **Legal precedents supporting the Applicant's claim that activity rendered by them do not qualify as an 'Intermediary Service'** submitted as under:

Attention of the Hon'ble authority is invited towards the below mentioned advance rulings which although rendered in the context of marketing service activities, the principle of said rulings has greater relevance under the current scenario or the technical advisory and business support services rendered by the applicants. Further, the reference to the said ruling has been made here only to draw principles of said rulings.

Advance Ruling in the case of Asahi Kasei India Private Limited

Facts of the case:

9.1 Asahi Kasei India Private Limited ("The Applicant") is a company incorporated in India in August 2012. The Applicant is a subsidiary of Ashai Kasei Corporation, Japan. The Applicant provides sales promotion and marketing support to Asahi Kasei group. For this, the Applicant has entered into a Services Agreement with Asahi Kasei Corporation, Japan and Marketing Services Agreement with various group companies of Asahi Kasei group. The scope of work under the Agreement is broadly stated below:

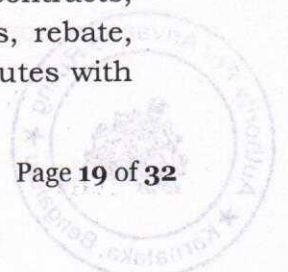
- a) Collecting and analyzing information i.e. market analysis and supporting Asahi Kasei group in getting new business;
- b) Providing marketing & administration support and back-office support (including accounting Support);
- c) Networking i.e. co-ordinate with the government authorities and relevant universities to join relevant trade associations;
- d) Supporting sales activity of Asahi Kasei group.

Issue for consideration:

9.2 Whether the service supplied by the Applicant under the Service Agreement dated 1 March 2013 constitute a supply of "Support services" falling under HSN code 9985 "Intermediary service" classifiable under HSN code 9961 /9962?

Authority Ruling:

9.3 On scrutiny of Marketing Services Agreement the authorities observed that the relationship between the parties is that of independent contractors i.e., the agreement does not intend to create relationship of principal and agent. The applicant in no way carries out activities such as conclusion of contracts, acceptance of sales orders, invoicing, determination of sales prices, rebate, discounts, resolution of customers complaints, or settlement of disputes with



customers. On the contrary applicant provides services on his own account to Asahi Kasei Medical Co. Ltd to augment their business *vis-a-vis* sale of bioprocess consumables in India territory. Thus, applying above test to the facts of the case we conclude that the service would not fall to be classified as 'intermediary service'.

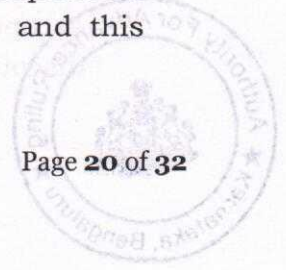
Application of Ruling to the Applicants case:

- 9.4 It is to highlight that above ruling is in the context of marketing services, however principle laid down in the AAR may be relied upon.
- 9.5 In the current case, the Applicant is acting as independent contractor. The Applicant is not involved in conclusion of contracts, acceptance of orders, etc. In the above case, the Applicant is merely providing/ collecting the information, analyzing the information and providing such information to Airbus SAS. Thus, the principal laid down in the above advance ruling is applicable to the current case, and on this basis the services provided by the Applicant should not qualify as 'intermediary service'.

Advance Ruling in the case of NES Global Specialist Engineering Services Private Limited

Facts of the case:

- 9.6 NES Global Specialist Engineering Services Private Limited (NES India) has its registered office is situated at office no 24 & 28, Red Bricks - Level 1, HDIL Kaledonia, Sahar Road, Andheri East, Mumbai - 400069, Maharashtra, India.
- 9.7 NES India & NES Global Talent Recruitment Services (NES Abu Dhabi) have proposed to enter into a service agreement through which NES India will provide support service in respect of the foreign business carried on by NES Abu Dhabi.
- 9.8 Further, every service provided by NES India will form part of the Master Services Agreement ("MSA") & its Schedules in detail. The services provided by NES India would be as following: Accounting, Sales Invoicing, Purchase Invoicing, Cash receipt posting, Bank Payment entries, Other receipt entries, Credit Control work, Support Assignment work, Payroll assistance, Storing and scanning of data to the data storage disk and any other work would be required by you as per your requirements.
- 9.9 Nature of Relationship as per agreement: In performing services pursuant to this Agreement, the Party providing such service will be an independent contractor of the Party for whom such services are performed, and this



Agreement will not be deemed to create a partnership, joint venture or other arrangement between the Parties.

Issue for consideration:

- 9.10 Whether the transaction in question is a Zero-Rated Supply or a Normal Supply under the GST Act? If the said supply is a Zero-Rated Supply, then can the same be considered as an export of service under the GST Act?

Authority Ruling:

- 9.11 From the scrutiny of the MSA it was observed that the relationship between the parties is that of independent contractors i.e., the agreement does not intend to create relationship of principal and agent. Thus, we find that applicant is not a person who arranges or facilitate supply of services between two or more persons and therefore the proposed service would not qualify as 'intermediary service'.
- 9.12 Further, as the applicant satisfies all the ingredients of 'export of services', the service provided by the Applicant covered under the aforesaid 'Marketing Services Agreement' would qualify as an export of taxable service.
- 9.13 Accordingly, the authority is of the opinion that the applicant is an exporter of services under GST Act and the supply of services in the subject case as covered by the MSA agreement submitted it is very clear that the said transactions are covered under "Zero rated supply".

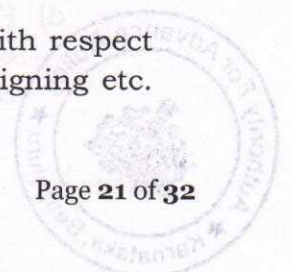
Application of Ruling to the Applicants case:

- 9.14 In the aforesaid ruling, the Hon'ble bench while determining whether the services qualifies to be an 'intermediary services' or not, emphasis was placed on the relationship of the parties to the agreement. As the relationship between parties were in the nature of principal-to-principal basis, it was ruled by the bench that the services rendered by the parties were outside the ambit of the 'intermediary services. Thus, applying the aforesaid rationale to the Applicants' fact of the case, it is amply clear that the Support services provided by the Applicants do not qualify as 'Intermediary Services'.

Advance Ruling in case of GoDaddy India Web Services Pvt Ltd, India

Facts of the case:

- 9.15 The facts leading up to the Ruling are as follows:
- a) GoDaddy US carried out the business of providing services with respect to internet domain name registration, webhosting, e-mail designing etc. to customers in India.



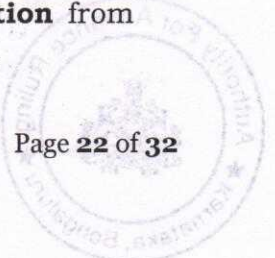
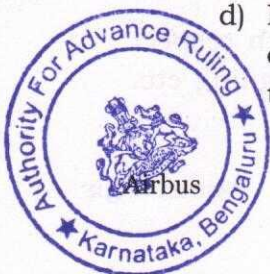
- b) An Agreement was entered into in this regard between GoDaddy India and GoDaddy US for primarily rendering marketing and promotional services, including but not limited to direct marketing, branding activities, offline marketing, participating in various events for increasing brand outreach, conducting brand promotion shows, setting up stalls at various exhibitions, fairs etc.

Issue for consideration:

- 9.16 The question under consideration before the Hon'ble AAR pertained to whether services provided to GoDaddy.com LLC (i.e. GoDaddy US), which had been rendered in the form of a complete package on a principal-to-principal basis, should be classified as 'business support services' or as 'intermediary services'
- 9.17 Attention is also invited towards the ruling in case of GoDaddy India (pertains to erstwhile regime) wherein the Hon'ble AAR held that the entire bundle of services provided by GoDaddy India to GoDaddy.com LLC (including marketing and promotion) should be classified as 'business support services' and not as 'intermediary services'.

Authority Ruling:

- 9.18 After due consideration, the Hon'ble AAR held that the entire bundle of services provided by GoDaddy India to GoDaddy.com LLC (including marketing and promotion) should be classified as 'business support services' and not as 'intermediary services'.
- 9.19 The prime reasons on which the Hon'ble AAR based its Ruling were as follows:
- Services were being provided by GoDaddy India with the sole intention of **promoting the brand** GoDaddy US in India, and increasing its business in India;
 - GoDaddy India would provide a bundle of support services in an integrated manner on a **principal-to-principal basis** and thus it cannot be considered an 'intermediary service' (based on a reading of Paragraph 5.9.6 of the Education Guide, 2012);
 - The said services could not be considered to have been availed by customers of GoDaddy US in India – as the **benefits of the said services accrued** to the recipient i.e. GoDaddy US (which is situated outside India);
 - Further, GoDaddy India would **not be responsible for servicing Indian customers** and therefore, there existed **no flow of consideration** from the various Indian customers to GoDaddy India; and



- e) Lastly, **no arrangement or facilitation** had been made by GoDaddy India with respect to the flow of services from GoDaddy US to customers in India.

Application of Ruling to the Applicants case:

- 9.20 In the present case, Airbus India is not involved in negotiating or concluding the terms of contract with the suppliers. The limited role of the Applicant is to provide support services to Airbus SAS which is separately compensated with a service fees computed on a cost-plus markup basis. The Applicant is not responsible for providing any services to the suppliers. Thus, the question of arrangement and facilitating supply of service between Applicant and supplier does not arise.

Reliance also placed on following judicial pronouncement made in the previous Indirect tax regime (Finance Act- Service Tax):

Verizon India Pvt. Ltd. v. Commissioner of Service Tax [TS-594-CESTAT-2019-ST]

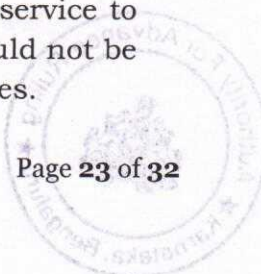
Judicial Decision

- 9.21 It may also be relevant to note that in case of **Verizon India Pvt. Ltd. v. Commissioner of Service Tax [TS-594-CESTAT-2019-ST]** it was held by the New Delhi Tribunal, that assessee providing services such as activity of market research, sales proposals, developing pricing and contracts, billing, negotiation of service contracts, identification of customers network requirements, procurement identification, sales and service support, within the guidelines provided by the overseas group entity, on Principal to Principal (P2P) basis at cost plus mark-up, does not qualify as 'intermediary service'. The entire premise of the Tribunal's decision in this case was based on the fact that the Appellant was working on P2P basis and was being compensated on cost-plus markup basis.

Commissioner of Central Excise and Service Tax versus Analog Devices India Private Limited;

Judicial decision:

- 9.22 Here in the above case, the Hon'ble bench of CESTAT – Bengaluru has held that the Respondent, Indian Company are as per the agreement involved in locating the potential customers in India for the products of the foreign company located abroad. Although the services are provided with respect to buyers in India, but the benefit of the same would be accrued to the company located abroad and not to Indian Company. Furthermore, it is also an undisputed fact that Respondent Company do not render any service to any Indian customers, the services rendered by the Respondent could not be held as 'intermediary services', rather it amounts to export of services.



AMD India Private Limited versus CST, Bangalore

Judicial decision:

- 9.23 In the above said case, the Hon'ble bench of CESTAT has held that the appellant is a subsidiary of its holding company and is providing services under the Master Services Agreement and the same Master Services Agreement does not provide that the appellant will facilitate or will arrange the purchase and sale on behalf of the AMD entities outside India. Thus, the services rendered by the appellant do not fall under the definition of intermediary and it satisfies all the conditions prescribed under rule 6A of the Service Tax Rules, 1994.

Analog Devices India Private Limited versus Commissioner of Central Tax, Bengaluru East;

Judicial decision:

- 9.24 The judicial decision mentioned supra (point 3.22) has been upheld even the in current case.

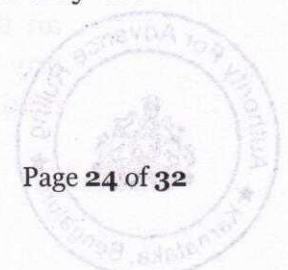
M/s Chevron Phillips Chemicals India Private Limited versus Commissioner of CGST and Central Excise, Navi Mumbai

Judicial decision:

- 9.25 Here in the above case, the Hon'ble bench of CESTAT, Mumbai – held that the services of sales promotion of goods, provided by the appellant would not be considered as intermediary as the appellant has not role in fixation of the price nor can negotiate in any manner between the overseas Group companies and their clients relating to the clients.

Application of Ruling to the Applicants case:

- 9.26 The above said ***rulings*** would equally apply even to the applicants' current facts of the case, as it can be noted that the agreement entered between the Applicant and Airbus SAS is nowhere specified that the Applicant will facilitate or will arrange the purchase and sale on behalf of its Group Companies.
- 9.27 It is to highlight that the Applicant is acting as independent contractor. The Applicant is not involved in conclusion of contracts, acceptance of orders, etc. The Applicant is merely providing/ collecting the information, analyzing the information and providing such information to Airbus SAS. Thus, the principal laid down in the ruling i.e. on principal to principal basis is applicable to the current case, and on this basis the services provided by the Applicant should not qualify as 'intermediary service'.



9.28 Accordingly, in the present case, the Applicant is working on the Principal to Principal basis. In the current case, the Applicant is acting as independent contractor. The Applicant is not involved in conclusion of contracts, acceptance of orders, etc. Like in the above case, the Applicant is merely providing/ collecting the information, analyzing the information and providing such information to Airbus SAS. Thus, the principal laid down in the above judgement is applicable to the current case, and on this basis the services provided by the Applicant should not qualify as 'intermediary service'.

10. The applicant with regard to their question **"Whether the services rendered by the Applicant would not be liable to GST, owing to the reason that such services may qualifies as 'export of services' in terms of clause 6 of Section 2 of the Integrated Goods and Services Tax Act 2017 (hereinafter 'IGST Act, 2017') and consequently, be construed as 'Zero rated supply' in terms of Section 16 of the said act?"** submitted as under:

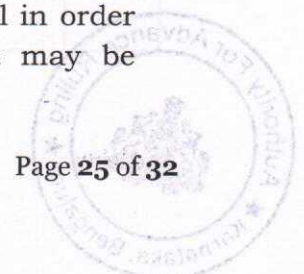
10.1 In order to conclude any supply of service as "Export of service", it is imperative to understand the definition of the term "export of services" as defined under clause 6 of section 2 of the IGST Act, 2017. The relevant extract is set out hereunder:

"(6) "export of services" means the supply of any service when, (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange, and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"

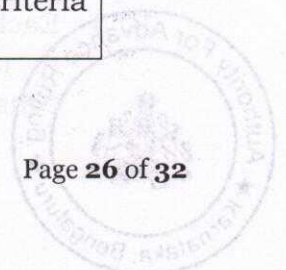
10.2 From the above definition, it can be noted that in order to qualify whether any supply of service as "Export of Services" the below mentioned cumulative conditions are required to be satisfied:

- 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.

Each of the above criteria has been discussed below table in detail in order to understand whether the services provided by the Applicant may be construed as 'Export of Services':



Sl. No.	Condition	Fact of the Case
1)	Supplier of service is located in India	<p>In this connection, we refer to the definition of the term "location of the supplier of services" as defined under clause 15 of section 2 of the IGST Act, 2017. As per the said definition, where a supply has been made from a place where the person has obtained registration, the location of the supplier shall be such place of business.</p> <p>Accordingly, in the instant case, the Applicant is providing service from Karnataka for which it has also obtained GST registration. Consequently, the location of the supplier of service shall be Karnataka (i.e. in India.)</p>
2)	Recipient of service is located outside India	<p>In the instant case, since Airbus SAS is located outside India (i.e. France). Consequently, the said criteria met by the applicant.</p>
3)	Place of supply of service is outside India	<p>In order to determine the place of supply, we refer to provisions contained in Section 13 of the IGST Act which enunciate the place of supply of services in case where either the service recipient or the service provider is situated outside India.</p> <p>As the services provided by the Applicant is in the nature of "Other professional, technical and business services" which is classifiable under HSN code 9983. The place of supply in the instant case would therefore be determined as per the general rule i.e. as per sub-section 2 of section 13 of the IGST Act, 2017, wherein the said sub-section provides that the "location of the recipient of services" shall be the place of supply of services.</p> <p>Thus, applying the above rationale to the instant case, it can be concluded that the place of supply of services shall be the location of Airbus SAS is currently outside the India.</p>
4)	Payment is received in convertible foreign exchange	<p>As per the agreement, the invoice would be raised and money would be received / collected in convertible foreign currency, thus it could be easily concluded that the aforesaid criteria would be satisfied by the Applicant.</p>



5)	Supplier of service and recipient of service are not merely establishment of distinct person	<p>Explanation 1 to Section 8 of the IGST Act, 2017 <i>inter alia</i> provides that where a person has an establishment in India and any other establishment outside India, then such establishments shall be treated as establishments of different legal persons. The term person has been defined to include a Company.</p> <p>In the instant case, the service recipients i.e. Airbus SAS is not an establishment formed by the Applicant and consequently, it cannot be treated as an establishment of a distinct person.</p>
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10.4 The applicant based on the above discussion and analysis stated that “it could be construed that the Applicant fulfils all the required conditions for construing the supply of services as an ‘export of services’ in terms of clause 6 of Section 2 of the IGST Act, 2017”.

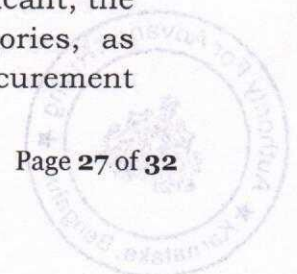
PERSONAL HEARING: / PROCEEDINGS HELD ON 15-04-2021

11. Sri Venkateshwaran T.R, Duly Authorised Representative of the applicant appeared for personal hearing proceedings held on 15-04-2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

12. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

13. The applicant is a private limited company and a subsidiary of Airbus Invest SAS, France (Holding Company) and its ultimate holding company is Airbus, SE Netherland. Airbus group is dependent, for sourcing various groups and services, on numerous key suppliers and sub contractors located globally to provide it with raw materials, parts, assemblies, systems, equipments and services to manufactures its products and hence it has established regional offices across countries. The applicant is one such regional entity. As per the agreement entered between the Airbus Invest SAS, France and the applicant, the activities performed by the applicant broadly fall under two categories, as mentioned in the applicant’s submissions above. They are Procurement



Operations (PO) Function and Procurement Transformation & Central Services (PY) function.

14. As per the agreement, the activities performed by the applicant involve identifying the local capabilities in India to supply the raw materials, onsite assessment of the suppliers by the applicant to monitor their performance. The applicant assesses the quality of the production, risk evaluation in respect of the supplier and provides guidance to the vendors regarding the product expectation of Airbus Invest SAS, France. They obtain initial quotations and terms of the contract from the suppliers and share the same with the Holding company; review performance and production quality in terms of adhering to the production schedule of the suppliers selected by the Holding Company; create awareness of Airbus ethics and compliance guidelines amongst the suppliers approved and nominated by Airbus Invest SAS, France. The applicant also carry out audit on the procurement process, reports on un-ethical practices of suppliers and provides support to team in India and Europe for special projects. However, the applicant does not select the vendors, does not issue any purchase order, does not decide the price quotation and does not involve in payment to the vendors and does not enter into any agreement with the vendors on any terms and conditions in respect of the supply.

15. With this background, we proceed to address the first question, which is appended below:

Whether the activities proposed to be carried out in India by the Applicant would constitute as a supply of "Other professional, technical and business services" falling under HSN code 9983 or as "Intermediary service" classifiable under HSN code 9961/9962 or any other classification of services as specified under the Tariff entries of rate notification issued under Goods and Services Tax law?

We observe that the applicant is of the opinion that the activities undertaken by them are classifiable under Heading 9983 with description of 'Other professional, technical and business services'. As per the explanatory notes to the scheme of classification of services, heading 998399 offers the same description. This heading includes specialty design services including interior design, design originals, scientific and technical consulting services, original compilation of facts/information services, translation services, trademark services and drafting services. It is clearly evident from para 7 above and from the contract agreement that the applicant does not deal with the activities mentioned in the HSN 998399.

16. Now, we proceed to examine whether the activities undertaken by the applicant can be called intermediary services. Intermediary is defined, under Section 2(13) of IGST Act, 2017, as **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.** In this regard, we notice that the applicant has emphasized



upon not being an agent or a broker. We notice that there can be difference between agent, broker and an intermediary. Whereas in the case of an agent or broker, activity is undertaken on another's behalf which is not necessary in the case of an intermediary. Therefore, the reliance on principal to principal relationship or calling oneself as an independent contractor is not relevant for the purpose of determining an intermediary as per the definition. An intermediary will merely facilitate or arrange the supply of goods or services between two or more people but will not be providing such supplies on his own account. Here, the word, 'such' is of paramount importance. 'Such' goods in the present case are the raw materials supplied by the vendors to Airbus Invest SAS, France.

Applicant has also emphasized upon the **principle of ejusdem generis**. We understand that meaning of the phrase, '...any other person, by whatever name called.....' only denotes representation, which is also a characteristic of a broker or an agent. We observed that the applicant plays an important part in identifying the vendors, making them understand the product requirement, advising and guiding them not merely on technical aspect of the product but also the ethical aspect in relation to such activities, without which, Airbus Invest SAS, France will not be able to procure the goods from the vendors. Thus the instant activity is nothing but facilitating the supplies to them from India. The applicant's submission that the approval authority for such vendors lies with Airbus Invest SAS, France does not make a difference to the role of facilitation undertaken by the applicant. In fact, we note that this work of facilitation is understood by them as technical advisory, guidance and business support assistance concerning quality control standards, performance and safety standards of the **suppliers**. By doing all this, they are merely facilitating the supplies to their holding company as all these activities are directed at the vendors. We also note that it is not necessary that a commission payment is always involved in an intermediary scenario. Cost plus mark up can also be one of the ways for payment. The criterion of the nature of the payment is not part of the definition of Intermediary. Therefore, we conclude that the activities performed by the applicant are fulfilling the parameters mentioned in the definition of 'Intermediary' as per Section 2 (13) of IGST Act, 2017.

17. Now, we proceed to discuss the following case laws cited by the applicant.

- a. **Asahi Kasei India Pvt Ltd** [Advance Ruling Order NO.GST-ARA- 35/2018-19/B- 108 Mumbai dated 07.09.2018], Godaddy India web Series Pvt Ltd [Advance Ruling Order AAR/ST/08/2016], Chevron Phillips Chemicals India Pvt Ltd [2018 (4) TMI 301-CESTAT]: We would first clarify that this authority is not bound by the advance Rulings of other state. In all these cases, the issue was decided by ruling that it's a principal to principal relationship. As discussed in para 9, we are of the opinion that principal to principal relationship is relevant when we have to determine if the appellant is an agent or a broker but is not a determining factor when the question is about deciding the issue of intermediary. In the case of Chevron Phillips, CESTAT relied upon Lubrizol Advanced Materials India Pvt. Ltd. Vs. Commissioner of



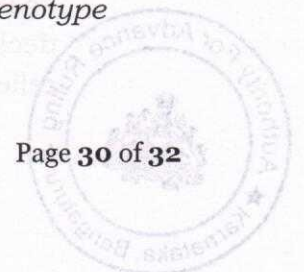
Central Excise [2019 (1) TIM 720-CESTAT MUMBAI] and M/s R.S. Granite Machine Tools Pvt. Ltd. Vs. CGST&CE [2019 (1) TMI 1179-CESTAT CHENNAI]. In the case of Lubrizol Advanced Materials India Pvt Ltd, CESTAT delved deeper into the subject and observed that the service fee charged by the appellant to its overseas group entities for provision of service has no direct nexus with the supply of goods by the overseas entities to its customers in India. Chevron Phillips would continue to receive remuneration even if there is no order received by the overseas entities. We observe that in that case, there was no discussion with regard to the contract or the nature of supply undertaken by the appellant. In its absence, one can not rely on the case to state that the applicant is not involved in facilitating or arranging the supply.

- b. **NES Global Specialist Engineering Services Pvt Ltd** [GST-ARA- 52/2018-19/B- 160 Mumbai dated 19.12.2018]: The facts of the case are different from the present case. In that case, the tax payer was involved in providing services like accounting, sales and purchase invoicing, bank payment entries, pay roll assistance etc to the overseas company. These are the main services which were provided by the tax payer on its own account. Whereas, in the present case, supply of goods is not occurring on applicant's account.
- c. **Verizon India Pvt Ltd** [2017 (12) TMI 830-CESTAT], Analog Devices India Pvt Ltd [2017 (12) TMI 830 -CESTAT],AMD India Pvt Ltd [2017 (12) TMI 772-CESTAT]- All these cases pertain to the positive tax regime in service tax when the concept of intermediary and POPS Rules 2012 had not come into being and hence not relevant to the present case.

In view of the foregoing discussions, we conclude that the applicant is an intermediary. Now, we proceed to classify the said service and its SAC code.

18. We find that the SAC 998599 covers the following activities:

*998599 Other support services n.e.c. This service code includes business brokerage and appraisal services other than for real estate; business services of **intermediaries** and brokers; specialist advice other than for real estate, insurance and engineering (specialist services in art, specialist services for courts of law, etc.); services by agencies and agents on behalf of individuals seeking engagements in motion pictures, theatrical productions, modelling or other entertainment or sports attractions; placement of books, plays, artwork, photographs, etc., with publishers, producers, etc.; issue of reduced-price coupons and gift stamps; management services for copyrights and their revenues (except from films); management services for rights to industrial property (patents, Page 83 of 129 licences, trademarks, franchises, etc.); auctioning services other than in connection with legal procedures; reading of electric, gas and water meters; data preparation services; specialized stenotype*



services such as court reporting; public stenography services; other business support services not elsewhere classified

This service code does not include: - maintenance of electricity, gas and water meters, of. 996911, 996912, 996921 - services related to advertising and sales promotion, of. 99836 - management services for motion picture rights, of. 999614 - art facilities operation services, of. 999623 - management services for artistic rights, of. 999629 - sports events organization services, of. 999651

We find that as per para 3 of preface to Explanatory Notes to the Scheme of Classification of Services, the explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the suppliers and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the **most specific description** shall be preferred over a more general description. Here, we find that the SAC 998599 is a specific heading for the activities of the applicant. Further, we have already noted in para 8 above that SAC 9983 is not relevant to the activities of the applicant. The rate of GST applicable to the activities of the applicant is 18% in terms of clause (ii) of entry no. 23 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

19. We now address the second question of the applicant, which is appended below:

Whether the services rendered by the Applicant would not be liable to GST, owing to the reason that such services may qualify as 'export of services' in terms of clause 6 of Section 2 of the Integrated Goods and Services Tax Act 2017 (hereinafter 'IGST Act, 2017') and consequently, be construed as 'Zero rated supply' in terms of Section 16 of the said act?

We find that Export of service is defined, under Section 2(6) of the IGST Act, 2017, as under:

2(6) —export of services means the supply of any service when,— (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India] 2 ; 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 services of the applicant are covered under intermediary services, as concluded at para 17 above and hence the place of supply is India in terms of Section 13(8) of the IGST Act 2017. Thus the activities of the applicant are exigible to GST at the rate of 18% in terms of clause (iii) of entry no. 23 of Notification No. 11/2017-Central Tax (R) dated 28.06.2017.

20. In view of the foregoing, we the following

RULING

1. The activities carried out in India by the Applicant would constitute a supply as "Intermediary services" classifiable under SAC 998599.
2. The services rendered by the Applicant do not qualify as 'export of services' in terms of sub-section 2 of Section 6 of the IGST 2017 and consequently, are exigible to GST at the rate of 18% in terms of clause (iii) of entry no. 23 of Notification No. 11/2017-Central Tax (R) dated 28.06.2017.


(Dr. Ravi Prasad.M.P.)
Member
Karnataka Advance Ruling Authority
Place: Bengaluru - 560 009
Date: 01-07-2021


(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Indirect Taxes, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Indirect Taxes, Bangalore East Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-35 A, Bengaluru.
5. Office Folder.