

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	TERETEX TRADING PRIVATE LIMITED
Address	5 TH Floor, B-504, City Centre, Sector-I, Salt Lake, Kolkata-700064
GSTIN	19AACCT1709Q1ZV
Case Number	04 of 2021
ARN	AD190321001275L
Date of application	March 15, 2021
Order number and date	03/WBAAR/2021-22 dated 28.06.2021
Applicant's representative heard	Mr Vivek Agarwal, Authorised Representative Mr Santanu Chaudhuri, Authorised Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 Teretex Trading Private Limited (hereinafter referred to as, the applicant) is going to be engaged in supplying services by way of arranging sales of goods for various overseas manufacturers/ traders.

1.3 As stated by the applicant, the modus operandi of the business activities to be undertaken by him may be briefly summarised as under:

- (i) To locate prospective overseas/Indian buyers and know their requirement of goods;
- (ii) To arrange sales of the said goods from the foreign manufacturers/ traders to the prospective buyers;
- (iii) Goods are delivered to the buyers directly by the suppliers located outside the country;
- (iv) No prior agreement is made by the applicant with the overseas manufacturers/ traders for arranging such sales;
- (v) The applicant receives consideration in the form of commission in convertible foreign exchange from the overseas suppliers.

1.4 The applicant is of the opinion that the services going to be undertaken by him shall be termed as 'export of services' as per clause (6) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as, the IGST Act, 2017) and therefore, he has no liability to pay tax on such supply of services.

1.5 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (e) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the question raised in the Application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the Revenue has raised no objection to the admission of the Application.

1.8 The Application is, therefore, admitted.

2. Submission of the applicant

2.1 The applicant submits that being an independent service provider, he is going to undertake supply of services at his own risk and cost without being appointed as an agent by the supplier or by the recipient of goods.

2.2 The applicant also submits that he doesn't represent the party for whom he is procuring the order for supply of goods nor has any authority to negotiate at the time of procuring order for them. He doesn't assume any obligation either on behalf of the supplier or on behalf of the recipient of the goods.

2.3 The applicant has categorically denied his role of an agent or representative but has admitted that he arranges or facilitates supply of goods for the party for whom he procures order to supply goods. The applicant has submitted that in some industries, such as Textiles and Chemicals, there is the normal practice of selling goods through independent mediator/service provider without being appointed him as an agent against commission at the rate normally prevalent in the market which is generally 1% or 2% depending on the volume of trade. Further, in other industries, the mediator/service provider may arrange sales at his own risk and cost without being appointed as an agent. Rate of commission in such cases is also followed by certain market norms and negotiable between the overseas seller of goods and the service provider who arranges the sales.

2.4 It has also been submitted by the applicant that he doesn't maintain any establishment outside India and receives payment as commission directly from the overseas seller to his bank account in India meaning thereby the overseas seller of goods (the recipient of services in the instant case) and the applicant (the supplier of services in the instant case) cannot be termed as merely an establishment of a distinct person in accordance with Explanation 1 in section 8 of the IGST Act, 2017.

2.5 The applicant further portrays following nature of supply of services to be undertaken by him:

- (a) Services is provided where both the supplier and the recipient of the goods are located outside the taxable territory of India;
- (b) Services is provided where the supplier of goods is located outside the taxable territory of India and the recipient of the goods is located within the taxable territory of the country.

2.6 The applicant is of the view that both the supplies as enumerated in the preceding paragraph fulfil all the conditions stipulated under clause (6) of sub-section (2) of the IGST Act, 2017 so as to qualify as 'export of services' and the applicant, therefore, doesn't have any liability to pay tax on such supply of services.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representatives of the applicant during the course of personal hearing. The moot point to be decided in the instant case is the classification of the services provided by the applicant to its overseas client. To be more specific, the issue at hand is to decide whether the services provided by the applicant shall be treated as export of services or not.

4.2 Clause (6) of section 2 of the IGST Act, 2017 defines 'export of services' as under:

"export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees whether permitted by the Reserve Bank of India; 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;

4.3 According to the modus operandi of the business as submitted by the applicant, we find that the supplier of service i.e., the applicant is located in India and the recipient of the service i.e., the overseas supplier of goods to whom the applicant provides services is located outside India. However, the nature of activities going to be undertaken by the applicant towards arranging or facilitating supply of goods envisages the services closely akin to the services provided by an 'intermediary' as defined in clause (13) of section 2 of the IGST Act, 2017.

4.4 The term 'intermediary' has been defined in clause (13) of section 2 of the IGST as under:

"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

It appears that the crux of the definition is lying with the phrase 'arranges or facilitates the supply of goods or services or both' between two or more persons. Another condition which requires to be fulfilled is that the person shall not supply such goods or services on his own account.

So, according to clause (13) of section 2 of the IGST, an intermediary is:

- (i) a broker, an agent or any other person;
- (ii) who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons; and
- (iii) who doesn't supply such goods or services or both or securities on his own account.

4.5 In the instant case, the applicant has admitted that he procures purchase order for supply of goods from the buyers located in India. He then connects such prospective buyers with the supplier of goods who are located outside the country. The supplier of goods thereafter despatches the goods directly to the buyers. Question may arise that whether mere identification of customers and to connect them with the supplier would result in a supplier of service being classified as an intermediary?

4.6 It has been admitted by the applicant that the value of supply of services in the form of commission is determined at the rate normally prevalent in the market which is generally 1% or 2% depending on the volume of trade. It clearly establishes the fact that the supply of services as provided by the applicant is inextricably linked with the supply of goods made by the overseas supplier. We also find in the present case that the applicant can neither change the nature and value of supply of goods nor he holds the title of the goods at any point of time during the entire transaction. Further, the value of supply of services as provided by him is claimed to be based on an agreed percentage which is separately identifiable. Furthermore, the applicant has admitted that he is going to undertake the aforesaid business activities without assuming any obligation either on behalf of the supplier or on behalf of the recipient of the goods meaning thereby he doesn't supply such goods on his own account.

4.7 It therefore appears that the applicant being supplier of services by way of arranging or facilitating sales of goods for various overseas suppliers and admittedly the same is not being done on his own account, satisfies all the conditions to be an intermediary as defined in clause (13) of section 2 of the IGST Act, 2017.

4.8 The place of supply is determined under section 13 of the IGST Act, 2017 where location of supplier or location of recipient is outside India. In the present case, the applicant being the supplier of services is located in India and the recipient of services being located outside the country attracts the provisions of the aforesaid section of the Act *ibid*. We have already discussed that the applicant is found to be an 'intermediary' as defined in clause (13) of section 2 of the IGST Act, 2017. So, the place of supply shall be determined under sub-section (8) of section 13 of IGST Act, 2017 which shall be the location of the supplier of services i.e., in West Bengal for the present case. As a result, the supply shall be treated as an intra-State supply in terms of sub-section (2) of section 8 of the IGST Act, 2017 and tax will be levied accordingly. This transaction will, therefore, not be covered within the definition of export of services as provided in Section 2(6) of IGST Act, 2017 as it is not satisfying one of the conditions of place of supply being outside India, as enumerated in Section 2(6)(iii) of the IGST Act, 2017 and consequently shall not be treated as zero-rated supply as provided in section 16 of the IGST Act, 2017.

In view of the above discussions, we rule as under:

RULING

The services of the applicant by way of arranging sales of goods shall not be considered as 'export of service' as defined under clause (6) of section 2 of the IGST Act, 2017.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling