

Activities performed by the liaison office on behalf of its overseas head office are liable to GST – Maharashtra AAAR

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Summary

The Maharashtra Appellate Authority of Advance Ruling (AAAR) held that the FEMA¹ and the Goods and Service Tax (GST) Act are entirely different acts having their own objectives and purposes. Further, the appellant does not get exemption from GST payment just because the liaison office is set up to attain some specific objectives in India, unless such body is specifically exempted from GST. Hence, the AAAR held that the applicant is required to obtain GST registration and pay Integrated GST (IGST) on the entire amount received from the overseas entity as the same shall qualify as mixed supply of support services.

Facts of the case

- The applicant² is a liaison office of its overseas head office³ (DCCI). It undertakes promotion of business by acting as a link between Indian business firms with the potential Dubai business partners. It is charging a consolidated amount from DCCI as reimbursement of monthly expenses incurred.
- The applicant is required to comply with the conditions prescribed by the RBI⁴ to carry out its activities.
- The applicant had approached the Maharashtra Authority of Advance Ruling (AAR) to understand GST implications on activities performed by the applicant.
- The Maharashtra AAR noted that the applicant acts as a conduit between Indian business partners and Dubai business partners to connect them. Hence, as per the provision⁵, the activities performed by the applicant are covered under the scope of an intermediary. Therefore, the AAR had

held that the activities would be treated as supply and liable to GST.

- The aggrieved applicant approached the AAAR and submitted that the AAR had wrongly concluded that the activities performed by the applicant are intermediary services.
- The applicant contended that it is involved only in liaison activities and prohibited from undertaking any commercial or business activity directly or indirectly as per regulation⁶. Besides, the activities undertaken would not constitute supply as the applicant and DCCI are one and the same person.

Maharashtra AAAR observations and ruling⁷:

- **Applicant is not intermediary:** The AAAR observed that the applicant is not arranging or facilitating the actual supply of any goods and/or services or securities between the Indian businesses and Dubai businesses. Thus, merely acting as a communication link will not render the applicant as an

¹ Foreign Exchange Management Act, 1999

² M/S. Dubai Chamber of Commerce and Industry

³ Dubai Chamber of Commerce & Industry. Dubai

⁴ Reserve Bank of India

⁵ Section 2(13) of IGST Act, 2017

⁶ Regulation 2(e) of the Foreign Exchange Management Regulations, 2016

⁷ MAH/AAAR/AM-RM/08/2022-23 dated 23 June 2022

intermediary. Further, the applicant is not receiving any fee or consideration from any of them, which means that neither the Indian businesses nor the Dubai businesses are recipient of its services.

- **Concept of mixed supply applicable:** The AAAR noticed that the activities undertaken by the applicant may be construed as an individual independent supply in itself, if undertaken separately. Based on the provision⁸, the AAAR stated that the applicant has undertaken a mixed supply of taxable services as well as non-taxable services. In present case, the event-based support services attract highest rate of tax. Accordingly, the applicant will be liable to pay IGST on the entire amount received from Dubai head office (HO). Thus, the applicant is required to obtain GST registration and pay IGST for providing mixed supply of support services.
- **No GST exemption unless the entity is specifically exempted:** The AAAR opined that the entity does not get GST exemption even if it is setup under the law to attain some specific objectives, unless such entity is specifically exempted from GST. Further, the FEMA and the GST Act both are entirely different acts having their own objectives and purposes. Besides, the amount received by the applicant in the form of monthly reimbursement of expenses from its HO will definitely be construed as consideration.
- **Host of activities can be construed as vocation:** The AAAR stated that the host of activities undertaken by the applicant on behalf of its HO can aptly be construed as vocation. Further, the

term vocation has been included in the definition of business⁹ under GST law. Therefore, the bunch of activities undertaken by the applicant will be construed as business.

- **Applicant is an artificial judicial person:** Upon perusal of the definition of the term person, the AAAR stated that the applicant is a person, as it has been incorporated under the laws of a country outside India. Further, it is also manifest that every artificial juridical person, is also a person. Thus, the AAAR concluded that the applicant, who is bound to comply with various statutory obligations in India, can definitely be considered as an artificial juridical person.

⁸ Section 13(5) of and Section 13(2) of IGST Act, 2017

⁹ Section 2(17) of CGST Act, 2017

Our comments:

In the present ruling, the Maharashtra AAAR concluded that the HO and its liaison office are two different persons as per the GST law. Hence, the host of activities performed by the liaison office at the behest of its HO comes under the ambit of supply.

In contrary to the above, the Karnataka AAAR, in case of Fraunhofer-Gesellschaft Zur Forderung¹⁰, had set aside the AAR ruling¹¹ and held that the activities of liaison office to carry out activities permitted by RBI do not amount to supply of service. However, the Maharashtra AAAR distinguished the above ruling on the ground that the facts are different.

Similarly, the Rajasthan AAR, in case of Habufa Meubelen B.V.¹², had held that the liaison activities undertaken by the applicant in line with the condition specified by RBI permission letter do not constitute supply. Even the ruling passed by Tamil Nadu AAR, in case of Takko Holding GMBH¹³, was in line with the order passed by Rajasthan AAR. However, the Maharashtra AAAR held that these AAR rulings are not binding.

The present ruling has created confusion amongst the taxpayers which may give rise to further litigation. The taxpayers entering similar kinds of transactions need to be cautious from the GST perspective. Further, considering divergent views on this issue, a clarification from the government will surely be helpful in preventing unnecessary litigation.

¹⁰ TS-73-AAAR(KAR)-2021-GST

¹¹ TS-895-AAR-2020-NT

¹² TS-297-AAR-2018-NT

¹³ TS-581-AAR-2018-NT

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