

Intermediary services provided by overseas commission agent do not qualify as import of services under GST– Uttarakhand AAR

20 June 2022



Summary

The Uttarakhand Authority for Advance Ruling (Uttarakhand AAR) has ruled that the overseas commission agent is covered under the scope of “Intermediary” as it facilitates the supply of goods to the applicant in the international market. The Uttarakhand AAR further observed that the services are out of the ambit of “import of services” as the place of supply of service is not in India. Thus, the Uttarakhand AAR concluded that the applicant is not required to pay Goods and Services Tax (GST) on reverse charge mechanism (RCM) on commission paid to the agent.

Facts of the case

- The applicant¹ is engaged in manufacturing and supplying seasonings, spices, premixes, and similar food products to its customers within and outside India.
- The applicant had engaged third-party intermediaries or business facilitators to reach out to customers outside India and connect them with the applicant. As a result, the applicant entered into an MOU² cum agreement with an intermediary³ to facilitate exports by arranging purchase orders from customers in foreign territory and was paid consideration for such services.
- The applicant has approached the AAR seeking clarity concerning GST liability on commission paid to the overseas commission agent.

Uttarakhand AAR observations and ruling⁴:

- **Overseas commission agent is an intermediary:** The AAR found that the agent is providing intermediary services in the international market and the applicant is utilising his expertise to get confirmed purchase orders. The

applicant is paying commission per the agreement's terms for his services. Thus, the overseas agent falls within the definition of “intermediary”.

- **Services do not qualify as an import of service:** As per the provisions⁵, the first two conditions of import of service stand satisfied in the present case, i.e., the agent being the supplier of service is located outside India, and the applicant is the recipient in India. Further, the place of supply in the case of intermediary services is the location of the supplier⁶. Thus, the third condition, i.e., the place of supply in India is not satisfied as the supplier is located abroad. Therefore, the AAR observed that the services are out of the ambit of “import of services”.
- **No GST liability under RCM:** As per the provisions⁷, import of services is treated as inter-state supply of services chargeable to Integrated GST (IGST) under reverse charge basis. Since the transaction in the instant case lies outside the scope of import of services, the same shall not be leviable to IGST under RCM.

¹ Dry Blend Foods Pvt Ltd.

² Memorandum of Understanding

³ Shri Bobby Kapoor

⁴ Ruling No. 01/2022-23 dated 1 April 2022

⁵ Section 2(11) of IGST Act, 2017

⁶ Section 13(8)(b)

⁷ Section 7(4)

Our comments

In the present ruling, the agent is providing intermediary services by way of supply of services of searching and finding customers outside India and connect them with the applicant. However, place of supply of such services is not in India. Accordingly, the Uttarakhand AAR has rightly held that the intermediary service is out of the ambit of import of services and therefore, GST is not payable thereon under RCM.

Earlier, a similar ruling was pronounced by the Uttarakhand AAR in case of M/s Midas Foods Private Limited⁸ wherein similar view was adopted and had held that GST is not payable on intermediary services under RCM as it is outside the ambit of import.

The present ruling is in line with the above ruling. Further, this is a welcome ruling which will provide the required clarity on this aspect and will set precedence in the similar matters.

In addition, in case where the agent located in India is providing intermediary services to the recipient located outside India, the place of supply of such services shall be in India as per the Section 13(8)(b) of the IGST Act, 2017. Accordingly, it is to be noted here that such services would qualify as intermediary services and not the export of services under GST.

⁸ Advance Ruling 10/2020-21 In Application No 05/2020-21

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