

# EY Tax Alert

## AAAR upholds services of back office in relation to supply of goods as intermediary service

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

### Executive summary

This Tax Alert summarizes a recent ruling<sup>[1]</sup> of Maharashtra Appellate Authority of Advance Ruling (AAAR). The issue involved was whether back office administrative and accounting services along with the services such as liaison with buyers and sellers of clients as a package can be intermediary services. Further, whether such services can be construed as composite supply or not.

According to the assessee, since the services are provided on principal to principal basis, they will fall outside the scope of intermediary services.

Basis the terms of the contract between assessee and its client, AAAR observed that the assessee is providing services for smooth supply of goods between client and its customers. Further, all the criterions of an intermediary are satisfied. Thus, the services are in the nature of intermediary services.

Relying on the service tax education guide and Goods and Services Tax (GST) flyer, AAAR held that the services being offered by the assessee as a package is nothing but the composite supply, of which the intermediary service is the principal supply.

<sup>[1]</sup> 2019-VIL-39-AAAR

## Background

- ▶ The assessee is engaged in providing back office support services to overseas companies (clients) who are engaged in trading of chemicals and other products in international trade.
- ▶ The assessee provides the following services to its clients:
  - ▶ Creating and sending sales contract and proforma invoice to customer and seeking shipping instructions.
  - ▶ Creating and sending purchase order, seeking proforma invoice and sharing shipping instructions.
  - ▶ Processing and sending payment request.
  - ▶ Following up to send original documents to clients / customers
  - ▶ Liaising with suppliers and inspection authorities
  - ▶ Arranging inspection certificates if applicable.
- ▶ The assessee has no role until the purchase /sale order is finalized by the clients. It comes into picture later to provide back office support.
- ▶ Apart from above, service of maintaining client's employee records, payroll processing, accounting of payments made by clients to suppliers etc. is also provided.
- ▶ The assessee requested Maharashtra Authority for Advance Ruling (AAR) to decide as to whether services provided to clients would qualify as 'zero-rated supply' in accordance with the provisions of Integrated Goods and Services Tax Act.
- ▶ The AAR<sup>2</sup> held that back office support services and accounting services provided by the assessee to clients outside India would be treated as intermediary services, hence leviable to GST.
- ▶ The assessee filed an appeal against the above ruling before Maharashtra AAAR.

## Assessee's Contention

- ▶ The assessee submitted that the term "intermediary" is defined as a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services, or securities, between two or more persons, but does not include a person who supplies such goods or services or securities on his own account.
- ▶ Relying on the principle of "*nos citur a sociis*" and "*ejusdem generis*", the assessee contended that the scope of the term "any other person" in relation to intermediary services would only include the persons

whose services are similar to those of an agent or a broker.

The term "broker" as defined in Lexicon by P Ramnath Ayer, Second Edition, page 245 and Baring Vs. Corrie, (1818) 2 Barn. & Ald. 137 and term "agent" defined in the Central Goods and Services Tax Act suggest that "broker" and "agent" means someone who negotiates and /or assist in broking a contract for supply of goods and / or services between two or more persons.

- ▶ Further, the term "facilitating supply of goods or service" is very wide term and if applied in general trade then host of services will fall under intermediary services and independent provisions incorporated for determining place of supply would become redundant.

For eg: telecommunication service which facilitates contact between two or more persons would also fall under the ambit of intermediary services.

- ▶ In this regard, it relied on the ruling of the Madhya Pradesh High Court<sup>3</sup> wherein it was held that if the language used is capable of bearing more than one construction, preference should be given to that construction which avoids inconsistency or uncertainty and friction in the system which the statute purports to regulate.
- ▶ It maintains accounts of its client, liaison with buyers and sellers of clients with respect to delivery, transportation of goods and payment etc. Thus, all the said services are provided as a package and are bundled in natural course of business. Therefore, the said services are in the nature of "composite supply".
- ▶ It supplies "Business Support Service" comprising of "back office support" and "accounting" which is its principal supply. If these services also facilitate supply of goods, then it is only an incidental supply to the principal supply. As already submitted, the assessee come into picture only after finalization of purchase / sale deals by the clients.
- ▶ The business support services provided to its clients, is on principal to principal basis. Therefore, the instant case is covered by the exclusion clause in definition of intermediary.

- ▶ It also relied on the decision of Authority of Advance Ruling under service tax in the case of Godaddy India Web Services Pvt. Ltd.<sup>4</sup> in this regard.
- ▶ Further, the assessee and overseas recipient are different corporate entities, therefore, the condition that the supplier of service and the recipient of service are not merely establishments of a distinct person has no application. Thus, the service should be treated as a zero rated supply.

<sup>2</sup> 2018-TIOL-263-AAR-GST

<sup>3</sup> BrijGopal Vs. State of M. P., 1978 MPLJ 70

<sup>4</sup> 2016-VIL-08-ARA

## Revenue's Contention

- ▶ Revenue reiterated their submissions which they made earlier before the AAR.
- ▶ Revenue before the AAR had contended the following:
  - ▶ The services stated in the agreement are provided by the assessee to branch of the clients located in India.
  - ▶ Mere agreement with the foreign company is not sufficient to determine whether transaction will be considered as an export of service.
  - ▶ No convertible foreign exchange has been received by the assessee.
  - ▶ Thus, the transaction cannot be qualified as export of service and thus the same will be taxable as inter-state supply.

## Appellate Authority's Ruling

- ▶ AAAR observed that the assessee provided various services such as sending sales contract and proforma invoice to the customer and getting shipping instructions from them, liaising with the supplier of cargo readiness etc. Therefore, these services were beyond the scope of back office work.
- ▶ It further observed that the assessee was receiving remuneration based on number of sales / purchase transactions handled.
- ▶ It noticed that the services provided by the assessee are in nature of facilitation of supply of goods between the two parties i.e. the clients and the suppliers/ customer of the clients. Thus, the first criterion of intermediary i.e., arranging or facilitating the supply of goods is satisfied.
- ▶ Further, the assessee is doing the above work on behalf of their client and the said supply of goods is invariably between two persons, i.e. between their client and its buyers/suppliers of goods, thereby, the second criterion of the intermediary is satisfied.
- ▶ Also, the assessee is not providing the goods in question, either to its client's buyers or to its client's suppliers on his own account. The goods in the question invariably belong either to its client or to its client's supplier. Thus, the above goods are, clearly, not provided on their own account, thereby, satisfying the third criterion of the intermediary services.
- ▶ In view of above, the AAAR held that while performing all the activities as per the agreement, the assessee is clearly acting as intermediary.
- ▶ On the issue as to whether the entire gamut of services provided by the assessee as a package against a lump sum amount can be considered as a composite supply, AAAR referred "Taxation of Services: An Education Guide" and "GST flyer on Composite Supply and Mixed Supply" and held that the service provided by the assessee is nothing but the composite supply, of which the intermediary services is the main supply.

## Comments:

While the ruling has been rendered in the context of a back office support service provider, the fact pattern examined by the authority comprises extensively of processing and fulfilment of orders involving supply of goods and services.

The ruling may open pandora's box by interpreting the definition of intermediary in a manner to cover all support services in relation to supply of goods or services.

It will need to be analyzed that co-ordination of various activities after execution of purchase or sales order can be *per se* classified as intermediary service.

As per GST law, advance ruling should technically be binding only the applicant in question. However, it would be relevant to evaluate the option of having separate contract for different set of services to avoid unwarranted litigation.

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