

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING**  
**6<sup>TH</sup> FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,**  
**GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018 )**

**BEFORE THE BENCH OF**

**SHRI. D.P.NAGENDRA KUMAR, MEMBER**

**SHRI. M.S.SRIKAR, MEMBER**

**ORDER NO.KAR/AAAR-14 B /2019-20**

**DATE:06-02-2020**

Sl. No	Name and address of the appellant	M/s Volvo-Eicher Commercial Vehicles Ltd, No 66/2, Embassy Prime, 502, 5 <sup>th</sup> Floor, B Wing, Bagmane Tech Park, C.V Raman Nagar, Bangalore 560093
1	GSTIN or User ID	29AABCE9378F1Z8
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 32/2019 Dated:12.09.2019
3	Date of filing appeal	08-11-2019
4	Represented by	Shri. Ravi Raghavan & Ms Sandhya Sarvode, Advocates
5	Jurisdictional Authority- Centre	Principal Commissioner of Central Tax, Bangalore East
6	Jurisdictional Authority- State	LGSTO- 35 - Bengaluru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20,000/- made vide CIN NO. ICIC19112900053957Dated 08.11.2019

**PROCEEDINGS**

**(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)**

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Volvo-Eicher Commercial Vehicles Limited, 66/2, Embassy Prime, 502, 5<sup>th</sup> Floor, B Wing, Bagmane Tech Park, CV Raman Nagar,



Bengaluru- 560093 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 32/2019 dated 12-09-2019.

**Brief Facts of the case:**

3. The Appellant is a joint venture between the Volvo Group and Eicher Motors Limited which came into effect in July 2008. They are in the business of selling Volvo branded trucks and thereafter providing after sales support services, including warranty services for Volvo branded trucks and buses in India.

4. In terms of the arrangement between the Appellant and M/s Volvo Sweden, the Appellant undertakes the distribution and aftermarket support of Volvo products in India. The Appellant sells its products with a standard warranty of 1 to 2 years, the cost of which is included in the cost of sale of products. The Appellant is responsible for the servicing of warranty claims of its customers and the onus to reimburse such expenses incurred for discharging the warranty obligation lies with M/s Volvo Sweden. In pursuance to this agreement, the Appellant, has been engaging in discharging of the warranty claims of customers, in India.

5. The transaction between the Appellant and the customer in respect of warranty claims can be summarized in the following manner:

- i. The Customer, claiming warranty services approaches the Appellant in case of grievance regarding parts of the vehicle.
- ii. The Appellant processes this claim, against the documents adduced by the customers. The processing of the warranty claims is done under the administration and purview of M/s Volvo Sweden.
- iii. The Appellant submits a "Technical Failure Analysis Report" to M/s Volvo Sweden to determine the bonafides of such warranty claim of the customer.
- iv. Upon acceptance of the warranty claim, the Appellant carries out services and repair work on the vehicles of the customers.
- v. However, in cases which require the replacement of parts, the Appellant also provides for free replacement of the defective parts and provides services of fitting out of such replaced parts on the vehicles.



- vi. The Appellant invoices Volvo Sweden for claiming the amount spent on discharging such warranty obligations.
- vii. The reimbursement sought includes the cost of replaced product and the services provided including fixing of the parts, for the purposes of replacing the goods.
- viii. After processing of the claims of the Appellant by M/s Volvo Sweden, they reimburse such expenses in convertible foreign exchange to the Appellant and its dealers.

6. In the above background, the Appellant sought for an advance ruling before the Karnataka Authority for Advance Ruling on the following questions:

- (a) *Whether the supplies made by the Appellant to M/s Volvo Sweden is a supply of services?*
- (b) *Whether the supplies by the Appellant amounts to export of services to M/s Volvo Sweden and hence zero rated under GST law?*

7. The Authority for Advance Ruling (AAR) vide order No KAR ADRG 32/2019 dated 12.09.2019 held as follows:

1. *The applicant is providing composite supply of goods and services to the customers wherein the principal supply is that of goods or services depending on the nature of individual case*
2. *The transaction is an intra-State or inter-State transaction (but not export transaction) depending on the place of supply.*
3. *Since this transaction is not an export of services, the transaction is not a "Zero-rated Supply" under the IGST Act.*

8. Aggrieved by the said ruling of the AAR, the present appeal has been filed before this Authority. The Appellant also filed an application for condonation of delay of 19 days in filing the appeal stating that the concerned authorised personnel of the Company were engaged in the Statutory Audit under the Companies Act 2013 and hence were unable to



provide the documentation required for filing the appeal within the due date i.e 20.10.2019.

The Appellant filed their appeal on the following grounds:

8.1. The Appellant submits that the lower Authority has held that there is a supply of parts and services to the customers for a consideration which amounts to a supply transaction with the Appellant being the supplier and the customer being the recipient of services; that this is based on an erroneous understanding of the definition of 'consideration' under Section 2(31) of the CGST Act which defines consideration to include 'any payment made, whether by the recipient or by any other person'. The Appellant submits that the definition of 'consideration' under GST is only an inclusive definition and hence the definition of 'consideration' should be understood vis-à-vis the Indian Contracts Act, 1872 which requires the promisor and promisee to have been in a contractually bound obligation for the consideration to flow in the contract; that in order for the amount paid by M/s Volvo Sweden to be considered as consideration for the supply from the Appellant to the customer, it is necessary that the reimbursements are made by M/s Volvo Sweden at the desire of the customer. In the instant case, the reimbursements are made by M/s Volvo Sweden pursuant to the arrangement between M/s Volvo Sweden and the Appellant; that the customer in India has no contractual right to enforce the performance of the warranty obligations by the Appellant or to seek the consideration to be paid to the Appellant from M/s Volvo Sweden. Therefore, they submit that the finding of the Advance Ruling Authority that the 'consideration' is being paid by M/s Volvo Sweden to the Appellant for the transaction between the Appellant and the customer is factually and legally incorrect.

8.2. They further submitted that the Appellant recovers the cost of providing such services from M/s Volvo Sweden and that contract is in complete distinction to the original sale agreement between the Appellant and the customer in India. In case of any breach, the customer has no privity of contract with M/s Volvo Sweden and cannot claim for M/s Volvo Sweden to reimburse the costs incurred to the Appellant. There is no contractual obligation between the customer and M/s Volvo Sweden for the obligation to arise. They submitted that payments are made by M/s Volvo Sweden pursuant to the arrangement between M/s Volvo Sweden and the Appellant and therefore the payments made by M/s Volvo Sweden to the Appellant is not consideration for the transaction between the Appellant and the customer.

8.3. They submitted that the activities undertaken towards warranty obligations of the manufacturer are services provided to the manufacturer and not the customer. Car



manufacturers enter into an agreement with the manufacturers of components, providing for a warranty so far as the parts are concerned. The dealers sell the vehicles with warranty from the manufacturer. If during the warranty period, any part is found to be defective and is to be replaced, the responsibility of replacement is on the manufacturer. Thus, the activities undertaken by the dealer during the warranty period is for meeting the obligations of the manufacturer and is therefore a supply made to the manufacturer, even though beneficiary may be the customer / buyer of the vehicles. The Appellant relied on the case of Blue Star Ltd Vs Commissioner of Service Tax, Mumbai – 2016 (46) STR 59 (Tri-Mum) to drive home the point that the activities undertaken towards warranty obligations of the manufacturer are services provided to the manufacturer and not the customer; that there is no supply from the Appellant to the customer as no consideration is paid by the customer to the Appellant.

8.4. The Appellant submitted that the transaction relates to supply of services of warranty from the Appellant to M/s Volvo Sweden with the customers located in India who are the beneficiaries; that the recipient of the supply in the present transaction is Volvo Sweden and not the customer. The Appellant either provides warranty services and/or also provides to replace defective parts if it is found to be provided for under the warranty obligation. However, in no case is there a mere transfer of goods without any service being provided under the warranty obligation. Hence, they submitted that the transaction is primarily a supply of service. Further they submitted that there is no invoice that is raised on the customer by either the Appellant or M/s Volvo Sweden, hence there is no supply with regards to the customer as far as the fulfilment of warranty obligations are concerned.

8.5. They submitted that the finding of the Authority is contradictory in as much as the order has in itself recorded that this transaction is merely providing of warranty service by the Appellant but has without any further reasoning gone on to record that the transaction is a composite supply of goods or services to the customers. They reiterated that the warranty service is provided by the Appellant to Volvo Sweden and not to the customer in India; that the Appellant does not provide for mere supply of goods but provides services primarily; that the transaction between the Appellant and M/s Volvo Sweden is either a supply of service, or is a composite supply of services with the supply of replaced goods being incidental to the primary supply of warranty services.

8.6. The Appellant submitted that the transaction between M/s Volvo Sweden and them is a zero-rated supply in as much as the place of supply of the service is outside India and all



other conditions for a transaction to be an 'export of service' stand satisfied; that the transaction of provision of warranty services are a supply of services and location of the recipient of such service is outside India; that as per Section 13 of the IGST Act, the location of the recipient of services is the place of supply; that the 'recipient of service' in the instant case is M/s Volvo Sweden and not the customer as no consideration is receivable from the customer for the instant transaction; that the very definition of 'recipient of service' is determined based on the person liable to pay consideration; that mere payment of consideration suffices to qualify as the 'recipient of service' in terms of Section 2(93) of the CGST Act. Hence the recipient of the supply in this case is Volvo Sweden and not the customer; that since the place of provision of service is located outside India, in as much as the recipient of service is located outside India, the instant transaction is an export of service and amounts to a zero-rated supply under GST and consequently no tax is payable by the appellant.

8.7. They refuted the findings of the lower Authority that the transaction between the Appellant and M/s Volvo Sweden is a mere facet of the transaction between the Appellant and the customer, wherein part of the payment is received from M/s Volvo Sweden. They submitted that this finding completely disregards the fact that there is no privity of contract between the customer in India and M/s Volvo Sweden. They also refuted the finding of the lower Authority that there is no clarity on how the acceptance of warranty claim is made and by whom. They submitted that the application for Advance Ruling had clearly stated that the acceptance of the warranty claim is at the behest of M./s Volvo Sweden based on verification of the documents sent by the Appellant to Volvo Sweden who may or may not accept such warranty claim. They emphasised on Section 2(93) of the CGST Act which provides for the definition of 'recipient of service' which is, in a case where consideration is payable, the person liable to make such payment; that in this case, the consideration for such services is wholly payable by M/s Volvo Sweden and hence they alone are the recipients of service, which in this case is located outside India.

8.8. On the above grounds, they requested that the ruling of the lower Authority should be set aside and prayed that the transaction between the Appellant and M/s Volvo Sweden be held as an export of service.



### **PERSONAL HEARING: -**

9. The Appellant was called for a personal hearing on 10<sup>th</sup> January 2020 and were represented by their Advocates Shri. Ravi Raghavan and Ms Sandhya Sarvode who reiterated the submissions made in their grounds of appeal. On a specific request by the Members, the Appellant was asked to produce a copy of the agreement entered into between the Appellant and M/s Volvo Sweden and they agreed to produce it at a later date.

9.1 The Appellant vide letter dated 23.01.2020 furnished a copy of the agreement dated 30.09.2014 between Volvo India Pvt Ltd and Volvo Eicher Commercial Vehicles Ltd. They also submitted that the appellant sells trucks to customers in India along with International Warranty which is issued by Volvo Sweden; the International Warranty obligation is honoured by Volvo Sweden in India through its designated workshop. The customer in India claiming warranty services approached the appellant in case of a grievance regarding parts of the vehicle in terms of the international warranty obligation. The Company processes this claim, against the documents adduced by the customers; that the processing of the warranty claim is done under the administration and purview of M/s Volvo Sweden. The Company submits a "Technical Failure Analysis Report" to M/s Volvo Sweden to determine the bonafides of such warranty claim of the customer; that upon acceptance of the technical failure analysis report, the same is communicated by M/s Volvo Sweden to the Company who carries out the repair work on the vehicles of the customers; that the Company raises invoices on Volvo Sweden towards the warranty services provided by them and also seeks reimbursement of the cost of the replaced product if any; the consideration towards warranty service provided by the Company is received in convertible foreign exchange from Volvo Sweden.

### **DISCUSSION & FINDINGS: -**

10. We have gone through the records of the case and taken into consideration the submissions made by the Appellant in their grounds of appeal and at the time of the personal hearing.

11. We find that the Appellant has sought for condonation of delay of 19 days in filing the present appeal. The impugned order of the AAR dated 12.09.2019 was received by the Appellant on 20.09.2019. In terms of Section 100(2) of the CGST Act, every appeal to this



Authority should be filed within a period of 30 days from the date on which the Advance Ruling order is communicated to the aggrieved party. The proviso to Section 100(2) empowers this Authority to condone the delay in filing the appeal by another period of 30 days. In this case, the due date for filing the appeal was 20-10-2019 but the Appellant has filed the appeal on the 8<sup>th</sup> November 2019 after a delay of 19 days from the due date for filing appeal. The Appellant has stated that the delay had occurred due to the reason that the concerned authorised personnel of the Company were engaged in the Statutory Audit under the Companies Act 2013 and hence were unable to provide the documentation required for filing the appeal within the due date. Considering the averments made by the Appellant, we are of the view that the delay caused in filing the appeal has been sufficiently explained. The delay in filing the appeal is hereby condoned in exercise of the power vested in terms of the proviso to Section 100(2) of the CGST Act.

12. Coming to the main issue at hand, the question framed by the appellant before the Advance Ruling Authority was whether the activities performed by the Appellant with regard to repair and servicing of Volvo vehicles for Indian customers during the warranty period is an activity amounting to a supply of service for Volvo Sweden and consequently whether the same is a zero-rated supply? On a detailed examination of the case, we find that the question is not whether the activity of repair and replacement of parts done during the warranty period amounts to a supply of service or not. The fact that there is a supply of service in the repairs and replacement of parts during the warranty period, has been admitted by the Appellant. The point that is under dispute is who is the recipient of the service provided by the Appellant during the warranty period? Whether the recipient is the customer who approaches the Appellant with a warranty claim, as held by the lower Authority, or whether the recipient of service is Volvo Sweden who reimburses the cost of parts and service provided in the warranty period?

13. For this let us understand the business model of the Appellant. From the records submitted, it is understood that the Appellant (M/s VE Commercial Vehicles Ltd) was set up as a joint venture company between AB Volvo, Sweden and Eicher Motors Ltd for the marketing, sales and distribution of commercial vehicles. The Appellant company has five business verticals of which one is the sale and distribution of Volvo trucks. The Volvo trucks sold in India by the Appellant are manufactured by M/s Volvo India Private Ltd, Tavarakere Post, Hoskote Taluk, Bangalore, a wholly owned subsidiary of Volvo Sweden. The



Appellant has entered into a Distribution Agreement dated 30<sup>th</sup> September 2014 with M/s Volvo India Pvt Ltd (VIPL), pursuant to which the appellant (referred to as 'Distributor' in the agreement) has been appointed as the exclusive distributor in India of Volvo range of products. We have perused the copy of the Distribution Agreement dated 30<sup>th</sup> September 2014 between the Appellant and M/s Volvo India Pvt Ltd.

14. The relevant clauses of the Distribution Agreement dated 30<sup>th</sup> Sept 2014 are reproduced hereunder for ease of reference:

2.1. VIPL hereby appoints the Distributor as VIPL's exclusive distributor in India (Area of Responsibility) for the distribution of products and the provision of the services on the terms and conditions set forth herein.

6.2. The Distributor shall, within the Area of Responsibility, set up, maintain and develop premises necessary and suitable for the fulfilment of the Distributor's responsibilities under this Agreement.

6.3. If the Distributor cannot fulfil its obligations as set out in this Agreement in the entire Area of Responsibility with its own resources, the Distributor shall appoint Authorised Dealers and/or Authorised Repairers in all areas where sufficient sales and service coverage cannot be provided by the Distributor.

16.1. The Distributor shall use its best efforts to sell each year, within the Area of responsibility, the quantities of products per brand as determined by the Parties in the Business Plan.

## **17. Services**

17.1. The Distributor undertakes to provide services as determined by the parties or – if an agreement cannot be reached – as decided by VIPL.

17.2. The Distributor shall ensure that the sales contract with the customer (i) provides that the customer is entitled to free of charge, pre-delivery service, service inspections and warranty and service work as set out in clause 24.1 herein, and (ii) contains through instructions for driving and maintenance.



20.3. VIPL will recommend the Distributor the prices at which Products may be sold. For the avoidance of doubt, the Distributor shall at all times remain free to sell the products at any price.

20.8. VIPL will deliver the products to the Distributor Ex-works VIPL's premises unless otherwise expressly agreed.

## **21. Warranties**

21.1. VIPL supplies Products to the Distributor for distribution with the benefit of VIPL and/or Volvo Group of Companies international warranty in force and applicable to India at the time of delivery to the Distributor. VIPL reserves the right to alter the warranty conditions from time to time, provided that such alternations shall not apply retrospectively to any warranties then in force.

21.2. In respect of sales of products, the distributor shall provide copies of the relevant warranties to the Authorised Dealers, the Authorised Repairers and to its customers as the case may be, and draw the customer's attention thereto.

21.3. Except as otherwise agreed in writing with VIPL, the Distributor has no authority to vary or alter the terms of VIPL and/or Volvo Group of Company warranty. If the Distributor undertakes any liability beyond that set out in the terms of VIPL and/or Volvo Group of Company warranty, the Distributor shall assume such liability for its own account.

## **24. Warranty work and Service Work:**

24.1. Regardless of where a customer has purchased a product, the Distributor will promptly and efficiently (i) carry out service and repair work, (ii) handle any claim made under and in accordance with VIPL and/or Volvo Group Company, and (iii) provide free servicing and conduct vehicle recall campaigns in accordance with VIPL's instructions. VIPL will reimburse the Distributor in respect of work under (ii) and (iii) in accordance with VIPL's standard rates.

24.2. For all service carried out, whether covered by warranty or not, the Distributor shall use only genuine parts.



24.3. The Distributor shall promptly carry out all warranty repairs or replacements in accordance with VIPL's instructions, issued in writing from time to time.

24.4. Payment by VIPL for warranty work carried out by the Distributor in accordance with this clause, shall be made in accordance with VIPL's published /agreed warranty procedures as may be determined by VIPL from time to time.

15. The Volvo Truck International Warranty guidelines submitted by the Appellant in their appeal memorandum reveals that every Volvo truck comes with a 12 month vehicle warranty (from the date of delivery with unlimited mileage) and the 24 month driveline warranty (valid for a period of 24 months from the date of delivery or upto 3,00,000 kms whichever occurs first). The Volvo Truck International warranty is subject to the condition that the vehicle has been serviced and maintained in accordance with Volvo recommendations, the vehicle has been used for the purpose for which it is intended and the driver has operated the vehicle in accordance with Volvo instructions. The warranty covers the costs for replacement or repair of defective Genuine Volvo Parts but no other losses, costs or damage whether direct, indirect or consequential. The warranty does not cover equipment and other parts already covered by the respective manufacturer's own warranty. Volvo Trucks Corporation undertakes to remedy, free of charge, established defects in material or faulty workmanship existing at the time of delivery or coming into existence during the warranty period. Volvo Truck Corporation, or the designated workshop, shall determine, at its sole discretion, the remedying actions to be taken by the designated workshop.

16. The Distribution Agreement at clause 21 states that all Volvo products will be sold by VIPL to the Distributor (the Appellant in this case) with the benefit of International warranty which is applicable to India. Further, clause 24.1 states that VIPL will reimburse the Distributor in respect of the work done with regard to handling warranty claims and free servicing and conduct of vehicle recall campaigns. Clause 24.4 provides that payment for the warranty work done by the Distributor will be made by VIPL in accordance with VIPL's published/agreed warranty procedures. The appellant has submitted the manner in which the warranty claims are processed which is as follows:

- i. The Customer, claiming warranty services approaches the Appellant in case of grievance regarding parts of the vehicle.



- ii. The Appellant processes this claim, against the documents adduced by the customers. The processing of the warranty claims is done under the administration and purview of M/s Volvo Sweden.
- iii. The Appellant submits a "Technical Failure Analysis Report" to M/s Volvo Sweden to determine the bonafides of such warranty claim of the customer.
- iv. Upon acceptance of the warranty claim, the Appellant carries out services and repair work on the vehicles of the customers.
- v. However, in cases which require the replacement of parts, the Appellant also provides for free replacement of the defective parts and provides services of fitting out of such replaced parts on the vehicles.
- vi. The Appellant invoices Volvo Sweden for claiming the amount spent on discharging such warranty obligations.
- vii. The reimbursement sought includes the cost of replaced product and the services provided including fixing of the parts, for the purposes of replacing the goods.
- viii. After processing of the claims of the Appellant by M/s Volvo Sweden, they reimburse such expenses in convertible foreign exchange to the Appellant and its dealers.

17. The terms of the Distribution Agreement reveal that the Appellant is required to provide the sales, repair and maintenance and the after sales services including warranty work, free service work and vehicle recall work in relation to the Volvo vehicles. The customers who purchase the Volvo vehicle are entitled to free of charge pre-delivery inspection and free of cost replacement and repairs during the warranty period. Post warranty period, the service of repair and maintenance of the vehicles are on chargeable basis which the customer will pay. In the case of a repair and replacement of a part during the warranty period, it has been undertaken by Volvo Group, as part of its International warranty terms, that the cost of the part and the cost of the service involved in fixing the part is reimbursed to the Distributor. It is an established trade practice that during the warranty period, the manufacturer is obliged to provide the repair and maintenance of the machinery, equipments, vehicles, etc. A warranty is a commitment given by the manufacturer to provide repair, service, replacement, or refund of a product for a certain time period subject to certain



conditions. It is also well settled that the cost of repairs and services during warranty period are a part of the cost of the products.

18. In the instant case, the Volvo vehicle which is sold by the Distributor -Appellant is covered by the International Warranty given by the manufacturer Volvo Sweden. When the customer approaches the Distributor from who he has purchased the Volvo vehicle, about a complaint or defect during the warranty period, it is the obligation of the manufacturer to provide the repair of the vehicle and/or replacement of parts. For this purpose, the Distributor sends the details of the warranty claim made by the customer to Volvo Sweden in the "Technical Failure Analysis Report" so that Volvo Sweden can determine whether the claim is as per the International warranty terms. Once it is agreed upon that there is a valid warranty claim by the customer, the manufacturer authorises the Distributor to carry out the repairs and/or replacement of parts and reimburses the cost of the repairs and parts to the Distributor. What is obligatory on the part of the manufacturer is done by the Distributor and for this the Distributor receives a reimbursement of costs.

19. In terms of Section 2(93) of the CGST Act, 2017, 'recipient of supply of goods or services or both' means

*(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*

*(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*

*(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,*

*and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;*

As per Section 2(31) of the CGST Act, "consideration" in relation to the supply of goods or services or both includes—



*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*

20. A reading of the definitions given in Section 2(93) and 2(31) of the CGST Act, indicates that the person who is required to make a payment for getting a job done is the recipient of service. To illustrate, if a manufacturer A is under obligation to provide free repair service during a specified warranty period to his customers in respect of some goods sold to them and he engages B to provide the services of free repairs during warranty period to his customers C1, C2, C3....., and for this he pays to B, the recipients of the service provided by B would be A, not the customers C1, C2, C3 ..... Accordingly, the recipients of the service supplied by the Appellant during the warranty period, will be the manufacturer Volvo Sweden as it is at their behest that the Appellant has undertaken the activity of repair and/or replacement of parts to the customer during the warranty period. The reimbursement received from Volvo Sweden is in the nature of consideration paid by the manufacturer to the Distributor-Appellant for carrying out the service during the warranty period, which activity was part of the obligations of Volvo Sweden. In view of the above, we disagree with the findings of the lower Authority that the recipient of service is the customer. We however agree that the supply by the Appellant to Volvo Sweden is a composite supply of goods and services with the principle supply being a supply of service.

21. Another question raised by the Appellant is whether the supply of service to Volvo Sweden is a zero-rated supply as provided under Section 16 of the said Act in as much as it amounts to export of services. The definition of "export of services" as per Section 2(6) of IGST Act, 2017 is as follows :-



“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;”

22. Thus, one of the important requirements for supply of any service to be treated as ‘export of service’ is that the place of supply of service is outside India. Thus, determination of ‘place of supply’ of service by the appellant is a must before concluding whether a supply of service is an export or not.

23. In terms of sub-section (2) of Section 97 of the CGST/KGST Act, the question on which the advance ruling can be sought shall be in respect of the following:

- (i) Classification of any goods or services or both;
- (ii) Applicability of a notification issued under the provisions of the Act;
- (iii) Determination of time and value of supply of goods or services or both;
- (iv) Admissibility of input tax credit of tax paid or deemed to have been paid;
- (v) Determination of the liability to pay tax on any goods or services or both;
- (vi) Whether the applicant is required to be registered;
- (vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of the term ‘supply’.

It is evident from the above that determination of place of supply is not a question on which an advance ruling can be sought. The Authority for Advance Ruling and the Appellate Authority for Advance Ruling have both been constituted in exercise of the powers conferred by section 96 and 100 of the Karnataka Goods and Services Tax Act, 2017, which Act



extends to the whole of the state of Karnataka. The AAR and the AAAR are creatures of the statute and have to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section 97(2) of the Acts, we refrain from answering this question of the Appellant with regard to 'export of service' on the grounds of lack of jurisdiction.

24. In view of the above we pass the following order

### ORDER

We set aside the ruling No.KAR ADRG 32/2019 dated 12/09/2019 passed by the Advance Ruling Authority and answer the questions of the Appellant as follows:

- a) The activities performed by the Appellant with regard to repair and servicing of Volvo vehicles for Indian customers during the warranty period is an activity amounting to a composite supply of goods and service for Volvo Sweden with the principle supply being a supply of service. The recipient of the supply of service is Volvo Sweden.
- b) We refrain from answering the question on whether the supply of services to Volvo Sweden amounts to export of services.

The appeal filed by M/s Volvo-Eicher Commercial Vehicles Ltd is disposed off as above.

  
(D.P. NAGENDRA KUMAR)

Member  
Karnataka Appellate Authority

  
(M.S. SRIKAR) 6/2/2020

Member  
Karnataka Appellate Authority

To,

The Appellant

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