

T, No-38/2019-20

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH 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-G/2019-20

DATE: 18.02.2020

Sl. No	Name and address of the appellant	Mr. Rajendran Santhosh D No. 2102, “Komalraj”, 2 nd Cross, H.D.Kote Road, Srirampura 3 rd Stage, Mysuru - 570 023
1	GSTIN or User ID	291800000429ARE
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 64/2019 Dated 20th Sept 2019
3	Date of filing appeal	20-11-2019
4	Represented by	Ms Roopashi Khatri, Advocate.
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Mysuru Commissionerate, Mysuru
6	Jurisdictional Authority- State	LGSTO 190, Mysuru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No SBIN19112900321323 for Rs 20,000/-

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 *pari materia* 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 Mr. Rajendran Santhosh, D No. 2102, "Komalraj", 2nd Cross, H.D.Kote Road, Srirampura, 3rd Stage, Mysuru - 570 023 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 64/2019 dated 20th Sept 2019.

Brief Facts of the case:

3. The Appellant is an individual stated to be an employee of an overseas company engaged in business of manufacturing and selling various categories of distribution transformer components and accessories. The Appellant states that he is employed as the Regional Sales Manager for the Middle East and Indian markets by H-J Family of Companies having its office in the United States.

4. The Appellant is required to make a presentation of the various categories of distribution transformer components and accessories offered by the company. The company specifies the presentation and the technical details of the products. The Appellant reports to a Sales Manager based in the office of the Company in Europe. The Appellant is required to report the status of the sales development (with customers in the Middle East and Indian Markets) to the Sales Manager based in the European Office on a weekly basis. The customers approached by the Appellant place their orders for the products with the Company and make payments to the Company's account. The Appellant does not raise any invoice for the products ordered by the said customers.

5. The Appellant is paid a lump-sum compensation monthly for the aforementioned services. The Appellant does not raise any invoice to the Company for the said services. In addition to the aforementioned compensation, the Company provides a credit card (that has been issued in the name of the company) for the purpose of reimbursing reasonable travel expenses, office needs and other business expenses incurred by the applicant in performing the said services.

6. In this connection the Appellant sought an advance ruling in respect of the following question:

- i. What is the classification of the services rendered by Mr. Santosh to H-J Family of Companies?

- ii. Is Mr. Santosh required to be registered under the CGST Act, 2017?
- iii. What is the liability of Mr. Santosh to pay tax on the services rendered by him to H-J Family of Companies?
- iv. What is the time and value of the supply of services rendered by Mr. Santosh to H-J Family of Companies?

7. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 64/2019 dated 20-09-2019 held as follows:

- 1. The services provided by the applicant to M/s H-J Family of Companies would result in the supply of services within the meaning of that term.
 - 2. The services provided would be classifiable under HSN 9983.11 under the description "Other professional, technical and business services"
 - 3. The applicant is required to be registered under the Central Goods and Services Tax Act, 2017
 - 4. The rates of tax applicable for the service provided are
 - a. In case of intra-State Supply
 - i. Under CGST at 9%
 - ii. Under KGST at 9%
 - b. In case of inter-State supply at 18% under the IGST Act
 - 5. The time of such supply would be determined as per the provisions of sub-section (2) of section 13 of the CGST Act, 2017 and the value of such supply would be the amount received by the applicant from the recipient of services and also includes the amounts reimbursed to the applicant by the recipient of services for the expenses incurred
8. The Appellant was aggrieved by the ruling given and has filed this appeal on the following grounds.

8.1. The Advance Ruling Authority has erred in the finding that the appellant is an intermediary and not an employee within the meaning of the CGST Act; that the Authority has erred in the appreciation of evidence (including the Appellant's Income Tax returns and the marketing brochure of H-J Family of Companies) in determining the nature of services performed by the Appellant under the GST law and has erred in the application of the established principles of law in the classification of income under an indirect tax legislation.

PERSONAL HEARING:

9. The Appellants were called for a personal hearing on 31st January 2020 and were represented by Ms Roopashi Khatri, Advocate who submitted that the challenge in the appeal was only with respect to the lower Authority's decision regarding classification of the service as an intermediary, under Heading 9983; that it is the claim of the Appellant that the service is one of market research done by an independent sales manager for a US company; that the foreign company has no permanent establishment in India and the Appellant is merely rendering a market research service for the foreign company and hence the same is an export of service. She submitted that the Appellant is not pressing the point regarding the IT returns and the same is being conceded. However, the Advocate sought time till 17th Feb 2020 to make detailed submissions.

9.1. The Appellant in their additional submissions dated 18th Feb 2020, submitted that the Advance Ruling Authority has erred in the finding of the Appellant as an "intermediary" and not an employee within the meaning of Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (the "**IGST Act**") read with Section 2(120) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"). They submitted that the term "intermediary" is defined under Section 2(13) of the IGST Act as hereunder:

*"(13) "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;"* (emphasis supplied)

9.2. They submitted that under the erstwhile service tax regime, in terms of Notification No. 7/2003-ST dated 20th June, 2003, "**Business Auxiliary Service**" and "**Commission Agent**" were defined as hereunder:

"(B) Definition and scope of service:

"Business Auxiliary Service" means any service in relation to, -

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

[Explanation - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;]

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

[Explanation - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to "manufacture" of excisable goods.

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this clause, -

(a) "Commission Agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person

- (i) deals with goods or services or documents of title to such goods or services; or
- (ii) collects payment of sale price of such goods or services; or
- (iii) guarantees for collection or payment for such goods or services; or
- (iv) undertakes any activities relating to such sale or purchase of such goods or services;

9.3. The Appellant submitted that with the introduction of the CGST Act, 2017, services are classified as per the United Nations Central Product Classification. Therefore, the classification of "Business Auxiliary Services" (which included the term "Commission Agent") under the erstwhile service tax regime has been discontinued; that in view of the activities undertaken by the Appellant, the following classification would be applicable in terms of the aforementioned Service Classification:

"998371 - Market research and public opinion polling services

Market research services

This service code includes market analysis, analysis of competition and the behaviour of consumers; use of research monographs, statistics, econometric models, surveys, etc.

998399 Other professional, technical and business services, n.e.c.

This service code includes drafting services (detailed layouts, drawings, plans and illustrations of buildings, structures, systems or components from engineering and architectural specifications, done by architectural draftsmen or engineering technicians); compilation services of facts and information (i.e. databases), n.e.c."

9.4. It is submitted that the Appellant does not directly receive or deal with the products of H-J Family of Companies in any manner and does not qualify as an intermediary service provider. Reliance is placed on *Bagal Kot Cement Co. v. State of Mysore* (1976) 5 CTR (SC) 106B:

*9. In Halsburys Laws of England, Fourth Edition, Volume 1, para 712 it is stated :
A mercantile agent is one having, in the customary course of his business as such agent, authority either to sell goods, or to consign good for the purpose of sale, or to*

buy goods, or to raise money on the security of goods. An agent may be a mercantile agent although he has no general occupation as an agent, or has only one customer, or although his general occupation is that of an independent dealer in the commodity entrusted to him, provided that he acts in the transaction in his capacity as mercantile agent; but he must not be a mere servant or shopman.

In para 713 is stated : "A del credere agent is one who, usually for extra remuneration, undertakes to indemnify his employer against loss arising from the failure of persons with whom he contracts to carry out their contracts."

*In the judgment under appeal the High Court repelled the stand of the appellant relying upon the decision of a Full Bench of the Madras High Court in *Kandula Radhakrishna Rao & ors. v. The Province of Madras represented by the Collector of West Godavari, Eluru & anr.* MANU/TN/0271/1952 : AIR 1952 Mad 718 Referring to the identical definition of the dealer in the Madras act Rajamannar, C.J. delivering the judgment on behalf of the Bench has stated at page 723, column 2 : "In the case of a commission agent, the accepted mercantile practice is that he has control over or possession of the good and he has the authority from the owner of the goods to pass the property in and title to the goods. If this is so, undoubtedly when a commission agent sells goods belonging to his principal with his authority and consent and without disclosing to the buyer the name of the owner, there is certainly a transfer of property in the goods from the commission agent to the buyer. A business which consists in such transactions can properly be described as a business of selling goods. A similar position would arise even in the case of a commission agent buying for an undisclosed principal. A commission agent doing this kind of business would in my opinion, fall within the definition of dealer in the Sales Tax Act. Neither the definition of dealer nor of sale contemplates as a necessary condition, that the goods sold should belong to the person selling or buying. There can be a sale or purchase on behalf of another."*

9.5. It is submitted that an entity providing services of market research or other professional, technical and business services (not elsewhere classified) to a non-resident service recipient cannot be considered as constituting "intermediary services". The Ruling of the Authority of Advance Rulings (New Delhi) in *M/s GoDaddy India Web Services Pvt. Ltd.*, AAR/ST/08/2016 is cited herein for ready reference:

It is reiterated that GoDaddy US is providing to the Indian Customers services, viz.; domainname registration and transfer services; web hosting and e-mail services; designing services,sale of on-demand products services and troubleshooting services. However, applicant isproviding to GoDaddy US services viz.; direct marketing and promotion services, supervision ofquality of third-party customer care center services and payment processing services, as perdraft Service Agreement between the applicant and GoDaddy US. There is no contract between the applicant and the customers of GoDaddy US based in India. GoDaddy US have used saidservices provided by the applicant as per the draft Service Agreement. Further, applicant wouldcharge a fee equal to the operating costs incurred by the applicant plus a mark-up of 13% onsuch costs, which would be received by the applicant from GoDaddy US in US Dollars. Thebenefit of services provided by applicant accrues to GoDaddy US outside India.

9.6. It is submitted that the Appellant is supplying services on his own account to H-JFamily of Companies and does not constitute the Permanent Establishment of thesaid companies; that in terms of Section 2(13)(2) of the IGST Act, the place of supply of service of market research or other professional, technical and business services (not elsewhere classified), not being an intermediary service, shall be the location of the recipient of the service. Section 2(13) of the IGST Act has been extracted herein for ready reference:

“13 - Place of supply of services where location of supplier or location of recipient is outsideIndia. (1) The provisions of this section shall apply to determine the place of supply of serviceswhere the location of the supplier of services or the location of the recipient of services isoutside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shallbe the location of the recipient of services: Provided that where the location of the recipient ofservices is not available in the ordinary course of business, the place of supply shall be thelocation of the supplier of services.

(3) The place of supply of the following services shall be the location where the services areactually performed, namely: —

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services: Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services: Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories

and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely: —

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services.

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.—For the purposes of this sub-section, the expression,— (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account; (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934; (c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934; (d) “non-banking financial company” means,— (i) a financial institution which is a company; (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following noncontradictory conditions are satisfied, namely:— (a) the location of address presented by the recipient of services through internet is in the taxable territory; (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory; (c) the billing address of the recipient of services is in the taxable territory; (d) the internet protocol address of the device used by the recipient of services is in the taxable territory; (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory; (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory; (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.”

9.7. It is submitted that export of services should be classified as a zero-rated supply in terms of Section 2(6) read with Section 16(1) of the IGST Act, 2017. The said provisions are extracted herein for ready reference:

“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;

16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:— (a) export of goods or services or both;

9.8. It is submitted that the Appellant does not constitute a liaison office or a permanent establishment for the H-J Families Group of Companies as per the service agreement between the Appellant and the said H-J Families Group of Companies.

DISCUSSIONS AND FINDINGS

10. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as in the additional written submissions.

11. We find that the Appellant has admitted to the aspect of there being a supply of service by him to M/s H-J Family of Companies and hence the point for determination by us is on the limited aspect of classification of the service supplied by the Appellant. We find that the lower Authority has classified the service under Service Code 9983.11 as “Other professional, technical and business services”. It has been held by the lower Authority that the Appellant is providing management services as an intermediary. It is the case of the Appellant that he is rendering a market research service for the US Company and his service is not that of an intermediary as held by the lower Authority. We find that the market research service is also classifiable under Service Code 9983 as “Other professional, technical and business services”. The explanatory notes to the classification of services explain the entry code 9983.11 as follows:

“This service code also includes providing advice, guidance and operational assistance concerning the marketing strategy and marketing operation of an organization. Marketing management consulting assignments may deal with one or a combination of the following:

i. analysis and formulation of a marketing strategy;

ii. formulation of customer service programmes, pricing, advertising and distribution channels;

iii. sales management and sales staff training;

iv. organization of marketing channels (sale to wholesalers or directly to retailers, direct mail, franchise, etc.), package design and other matters related to the marketing strategy and operations of an organization”

12. We therefore find that the only grievance of the Appellant is regarding the finding by the lower Authority that the management services are being provided in the capacity of an ‘intermediary’ as defined in Section 2(13) of the IGST Act. In this regard, the nature of the transactions of the Appellant as explained by him in his appeal is examined. It is seen that the Appellant is appointed as an “Independent Regional Sales Manager for the Middle East and Indian Markets” by the H-J Family of Companies, a company engaged in the business of manufacturing and selling various categories of distribution transformer components and accessories. The Appellant is required to make a presentation of the products offered by the H-J Family of Companies. The latter specifies the presentation and the technical details of the said products. The Appellant reports to a Sales Manager based in the office of H-J Family of Companies in Europe and furnishes a report on the status of the sales development (with customers in the Middle East and Indian markets). The Appellant does not conclude contracts between H-J Family of Companies and the final customer and does not directly receive or deal with the products of H-J Family of Companies in any manner. It is also seen that the customers enter into contracts directly with H-J Family of Companies.

13. It is evident from the above arrangement that the Appellant is merely doing sales presentations of the Company’s products to prospective customers in the Middle East and India. The sales presentations made by the Appellant to the prospective customers results in some customers directly entering into a purchase contract with the H-J Family of Companies for purchase of the Company’s products. The service of making the sales presentations regarding the product of the Company amounts to facilitating the sales and distribution of products by the H-J Family of Companies. It is evident from the definition of ‘intermediary’ as contained in Section 2(13) of the IGST Act that, to be called an ‘intermediary’, a person must satisfy the following conditions.

- (i) He must be a 'broker' or an 'agent' or 'any other person by whatever name called', who arranges or facilitates the supply of goods or services or both or securities'.
- (ii) The supply arranged or facilitated must be between two or more persons.

(iii) He is not the person who supplies such goods or services or securities on his own account.

The terms 'arrange' and 'facilitate' used in the definition of 'intermediary' have not been defined in the Act. Merriam Webster Dictionary defines the two words as:

Facilitate: to make (something) easier; to help cause (something); to help (something) run smoothly and effectively.

Arrange: to bring about an agreement or understanding concerning; to make preparations; to move and organise (things) into a particular order or position; to organise the details of something before it happens; to plan (something).

Therefore, a general understanding of the term 'arranging' or 'facilitation' would cover a very wide range of activities ranging from marketing or sales promotion of the goods or services of the client, locating prospective buyers for the client's products or locating sources of supply of the goods or services required by the client, price negotiation with the prospective buyer/ prospective supplier, procuring sales orders in respect of the goods or services of the client and like activities.

14. When we apply the general understanding of the term 'arranging' or 'facilitation' to the instant case, we find that the Appellant facilitates the sale of the products of H-J Family of Companies by undertaking sales presentations to the prospective customers in the Middle East and India. It must be appreciated that devoid of the product, there is no purpose in the sales presentations made by the Appellant. It is only with the sole intention of facilitating the sales of the product of the principal i.e H-J Family of Companies that the Appellant provides the service.

15. The definition of 'intermediary' as given in Section 2(13) of the IGST Act excludes a person who supplies such goods or services or both on his own account. It is the contention of the Appellant that the services of sales presentation are being provided to H-J Family of Companies on their own account and they do not directly receive or deal with the products of H-J Family of Companies in any manner. In this connection, it would be worthy to analyse

the definition of the term “intermediary services” under the GST regime and pre-GST regime.

Both the definitions have been mentioned below:

Under pre-GST regime	Under GST regime
<u>Rule 2(f) of the Place of Provision of Services Rules, 2012</u>	<u>Section 2(13) of Integrated Goods and Services Tax Act, 2017 (IGST Act)</u>
"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ' main ' service) between two or more persons, but does not include a person who provides the main service on his account	“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.

16. From the above definitions there does not seem to be any difference between the meaning of the term “intermediary” under the GST regime and pre-GST regime. In the pre-GST regime, an intermediary referred to a person who facilitates the provision of a **main** service between two or more person but did not include a person who provided the **main** service on his account. Similarly, in the GST regime, an intermediary refers to a person who facilitates the supply of goods or services or both between two or more persons but excludes a person who supplies **such** goods or services or both on his own account. The phrase ‘such goods or services’ used in the definition of ‘intermediary’ implies that the person should not be supplying on his risk and reward entirely, the very goods or services whose supply he is arranging or facilitating. In the instant case, the Appellant is facilitating the supply of the products of H-J Family of Companies. He is not supplying the products of H-J Family of Companies on behalf of the Principal. He is only facilitating the sales with the prospective customers. The actual supply of the products is done by the Principal directly to the customer. The service of facilitating a supply of goods between the Principal and the customers is provided by the Appellant to the overseas client (H-J family of Companies). The Appellant is not supplying such goods on his own account.

17. The argument of the Appellant that they fall within the exclusion clause of the definition of intermediary is not a correct interpretation of the law. The language of the exclusion clause is such that it is applicable to those persons who supply **such** goods or service (or both) on their own account. If a person either 'facilitates' or alternately 'arranges' any supply of goods or service (or both), between two or more persons, and does not supply such goods or service (or both) on his own account, he would be regarded as an 'intermediary'. At the risk of being repetitive, the Appellant is clearly facilitating the supply of the products of H-J Family of Companies directly to the latter's customers and is not supplying such goods on his own account. Therefore, the Appellant does not fall within the ambit of the exclusion.


18. The Appellant in his grounds of appeal has relied on the ruling given by the Authority of Advance Rulings under the Service Tax provisions in the case of GoDaddy India Web Services (P) Ltd Ruling No AAR/ST/08/2016 wherein the Authority has ruled that pure marketing and promotion services would not be intermediary services. We have gone through the said ruling. The facts in the said case are that GoDaddy India provides a gamut of services to its client GoDaddy US and provides support services to assist GoDaddy US to develop its brand in India. A ruling was sought whether the various support services provided by GoDaddy India are naturally bundled as a single service being Business support service. The contention of the Revenue was that the various support services provided by GoDaddy India was not a bundle of services but more appropriately covered under 'intermediary service'. The Authority in the said case, after taking note of the fact that the applicant (GoDaddy India) will not be engaged in arranging or facilitating provision of services by GoDaddy US to customers in India, will not secure orders from customers in India or arrange or facilitate the provision of any service by any third party service provider to GoDaddy US, held that the applicant is providing support services in relation to marketing, branding, offline marketing, etc on principal-to-principal basis to GoDaddy US which are a bundle of services naturally bundled in the ordinary course of business and accordingly is a single service being Business Support Service; that the business support service is the main service provided to GoDaddy US on their own account and hence is not an intermediary service. We find that the facts of the case before the Service Tax Authority for Advance Ruling, which are also briefly brought out above, are patently different from the facts in the case before us. As such the ruling given in the case of GoDaddy India does not buttress the case of the Appellant before us.

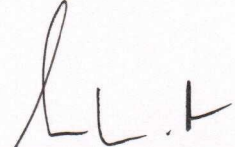
19. In view of the foregoing discussions, we uphold the decision of the AAR that the service of sales presentations of the products of H-J Family of Companies is classifiable as “Other professional, technical and business services” under Service Code 9983.11 and the same is being rendered as an ‘intermediary service’ as defined under Section 2(13) of the IGST Act. We also uphold the other findings of the lower Authority with regard to liability to register, the rate of tax and the time and value of supply.

20. In view of the above discussion, we pass the following order

ORDER

We uphold the Advance Ruling No KAR/ADRG 64/2019 dated 20-09-2019 and dismiss the appeal filed by Mr. Rajendran Santhosh, D No. 2102, “Komalraj”, 2nd Cross, H.D.Kote Road, Srirampura, 3rd Stage, Mysuru - 570 023 on all counts.


(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling


(M.S. SRIKAR) 18.2.2020
Member
Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Mysuru Commissionerate, Mysuru
4. The Assistant Commissioner, LGSTO-190, Mysuru
5. Office folder