THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/26A/2018-19 **Date- 11.12.2019**

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAACS0730L1ZG
Legal Name of Appellant	Micro Instruments
Registered Address	15, Shri Kripa, Ramakrishna society, Ram Mandir Road, Kherwadi, Bandra (East), Mumbai- 400 051
Details of appeal	Appeal No. MAH/GST-AAAR-26/2018-19 dated 24.12.2018 against Advance Ruling No. GST-ARA-23/2018-19/B-87 dated 10.08.2018
Jurisdictional Officer	Asstt. Commr. Of State Tax (MUM-VAT-D- 906), Nodal Division -5, Mumbai
Details of the AAAR order sought to be amended under Section 102 of the CGST Act, 2017	ORDER NO. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019

PROCEEDINGS

(under Section 102 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

A. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

B. In the present case, appeal had been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Micro Instruments, (herein

after referred to as the "Appellant" or Applicant interchangeably) against the Advance Ruling No. GST-ARA-23/2018-19/B-87 dated 10.08.2018, which was disposed of vide AAAR Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019. However, the Appellant filed the application under section 102 of the CGST Act, 2017 on 23.08.2019 for the rectification of the ruling dated 22.03.2019, issued by AAAR on the following grounds:

(i) It was alleged by the Appellant that the Appellate Authority for the Advance Ruling had committed an error of law, apparent on the face of record, in as much as while disposing the case, it had not applied its mind to the provisions of law, which gives it a jurisdiction to act in a particular manner. To support their contention, they drew analogy between the provisions laid out in section 102 of the CGST Act, 2017 governing the rectification of the advance ruling and the provisions of the Review Power enumerated in Order XLVII of the Civil Procedure Code 1908 by placing emphasis on the similar phraseologies i.e. **"any error apparent on the face of record"** used in section 102 of the CGST Act, 2017 and **"mistake or error apparent on the face of the record"** used in Rule 1, Order XLVII of CPC, 1908. They further contended that since the aforesaid phraseologies used in the section 102 of the CGST Act, 2017 and Rule 1 of the Order XLVII of CPC, 1908 are similar, the case laws pertaining to the Review matters would reasonably be applicable to the matter related to the rectification of the advance ruling. For the said purpose, they cited few judicial pronouncements, which are mentioned herein below:

   (i) Satya Narayan Laxmi Narayan Hegde Vs. Malikarajun Bhavanappa Tirumale [AIR (1960) SC 137]

   (ii) T.S. Balaram, ITO Vs. Volkart Bros. [(1971) 82 ITR 50 (SC)]

   (iii) Sir Hari Shankar pal and Another Vs. Anath Nath Mitter and others [1949 FCR 36]

   (iv) Parsion Devi and Others Vs. Sumitri Devi and Others [1997 (8) SCC 715]

   (v) Ruling pronounced by CESTAT in the case of Dinkar Khindria Vs. CCE, New Delhi, 2000 (38) RLT 442;2000 (118) ELT 77 (T-LB)

Here, the Appellant had placed emphasis on principle of law laid out in the abovementioned case of Sir Hari Shankar pal and Another Vs. Anath Nath Mitter and others [1949 FCR 36], wherein the Hon'ble Federal Court had observed as under:

"That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law, which gives it a jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of record sufficient to bring /the case within the purview of Order XLVII, Rule 1, Civil Procedure Code."

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By referring to the above cited judgment, the Appellant alleged that the Appellate Authority for Advance Ruling had committed an error apparent on the face of records, as it did not apply its mind to the true meaning purport of the expression "intermediate services" and without discussing its ramifications on the issue at hand, disposed of the case "declaring that it has no jurisdiction" to give any opinion or verdict, because it lacked the basic jurisdiction to "determine place of supply" under section 97(2) of the CGST Act, 2017.

(ii) They further alleged that the Appellate Authority had also /failed to appreciate the ramification of the CBIC Circular No. 107/29/2019 -GST dated 18.07.2019, which clarifies the issues relating to the "intermediary services" in as much as the definition of intermediary inter alia provided specific exclusion of a person i.e. that of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as "intermediary" even where the supplier of services qualifies to be an agent/broker or any other person, if he is involved in the supply of services on his own account. They further pleaded that had the Appellate Authority considered and applied the aforesaid Board Circular, then the self-evident answer would have emerged, wherein the Appellant, though an "intermediary" was covered by specific exclusion of a person i.e. that of a person who supplies

such goods or services or both or securities on his own account as per the clarification of the aforesaid Board Circular, and accordingly, the activities of the Appellant would have been covered by the section 13(2) of the IGST Act, which provides that the location of the recipient of service was the place of supply of service. To underpin the aforesaid contention, the Appellant cited below mentioned Court rulings:

(i) Paper Products Ltd. Vs. Commissioner of Central Excise [1999 (112) E.L.T. 765 (S.C.)], wherein the Hon'ble Apex Court held as under:

"5. It is clear from the above said pronouncements of this Court that, apart from the fact that Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time."

It was further submitted by the Appellant that the Circular issued by the Department under section 168(1) of the CGST Act, 2017 Shall be operative "retrospectively" if the Circular is beneficial to the Assessee. So as to support the aforesaid submissions, they relied on the Supreme Court Judgment [2007 (208) E.L.T. 321(S.C.)] in the matter of Suchitra Components Ltd. Vs. CCE, Guntur, wherein the Hon'ble Apex Court held that Beneficial Circular to be applied retrospectively while the oppressive Circulars are applicable prospectively.

They further contended that the Appellate Authority, by not adverting to the clarifications provided in the above said Circular dated 18.07.2019, had committed an error which is apparent from the face of record as conceived under section 102 of the CGST Act, 2017, hence the impugned order warrants amendment under section 102 of the CGST Act, 2017.

C. In view of the above submissions made by the Appellant, seeking the amendment in the impugned AAAR Order dated 22.03.2019 on the basis of the abovementioned grounds and reasons, personal hearing in the matter was conducted on 20.11.2019, which was attended by Shri D.P. Bhave, Advocate on behalf of the Appellant, wherein he reiterated the aforesaid submissions, as well as made additional submissions during the personal hearing, which was on the same line as that of the aforesaid submissions except the submissions on the determination of the jurisdiction with respect to the questions asked by the Appellant in their advance ruling application. To corroborate their claim as to the Appellant Authority had the jurisdiction to decide even the place of supply of the goods or services or both, for the purpose of the determination of the liability to pay tax on any goods or services or both as laid out under section 97(2)(e) of the CGST Act, they cited a Supreme Court Judgment in the case of Smt. Ujjam Bai Vs. State of U.P., pronounced on 10.04.1962. The Appellant, further, requested to file additional submissions in this regard, which we agreed to. Subsequently, the Appellant filed the additional submissions on 27.11.2019, and subsequently on 06.12.2019 as well and requested to pass the final order after due consideration of all the additional and supplementary submissions filed by them.

Additional submissions filed on 27.11.2019

1. Attention was drawn to the paragraph (C), page3, OIA dated 22-03-2019, which reads:

c. On the aforesaid facts, substantiated with the documentary evidence, which has not been controverted, the principal question for determination placed before the learned authority under section 97(2)(e) of the CGST Act, was:

In view of the above, it was submitted that, in the present case, the entire matter rests on the **questions of law**, and interpretation of the expressions: "intermediary", "intermediary services" and the scope of section 97 (2) (e) of the CCGST Act: "determination of liability to pay tax".

2. It was submitted that, in the present case, the statute did confer wide and untrammeled jurisdiction under section 97 (2) (e) of the SGST Act, to **"determine the**

liability to pay tax" on the impugned transaction of service, that is, "decide whether it is within the taxable territory or not", and "whether liable to tax"; but this Honorable Appellate Authority passed an abortive Order dated 22-03-2019 sidestepping its jurisdiction on a narrow ground that the section 97 (2) does not enumerate **"determination of place of supply"** and as such no opinion can be given either by the AAR or AAAR, who are functionaries under the SGST Act, and not under the CGST Act.

3. It was then submitted that jurisdiction to determine liability to pay tax can extend to and encompass determination of all related questions of law and fact as laid down by the Five Justices Constitution Bench in **Smt. Ujjam Bai vs State Of U.P** case.

4. In the context, it was further submitted that in the light of the Board's Binding Circular issued on 18th July 2019, it was certainly an error of law to have assumed that the impugned services rendered by the Applicant/Appellant **"are intermediary services"**, and hence the transaction was taxable in the State of Maharashtra, and since the recipient was outside the "taxable territory", the transaction was amenable to tax under the IGST.

5. Thus, the aforesaid two errors, jurisdictional and on merits, have resulted in frustrating the very object and purpose of having a taxpayer friendly provision to know, in advance, its liability to tax".

- In its message to all Taxpayers, through FAQ, the Board had declared in loud and clear terms the above object in these words:

"**To conclude**, it can be stated that the law makes a comprehensive provision **for Advance Rulings** to ensure that disputes are minimal. ..... **The aim is to provide certainty to the tax payer with respect to his obligations under the GST Act and an expeditious ruling, so that the relationship between the tax payer and administration is smooth and transparent and helps to avoid unnecessary litigation".**

- **The abortive Order dated 22-03-2019 did exactly the opposite!!**

6. **In the end:**

(a) It was submitted that it was perfectly lawful for this Honorable Appellate Authority ***to correct the order already passed based on the law declared by the High Court/Supreme Court, on a date subsequent to the date of the passing of the order,*** because the law so declared is always retrospective in effect from the date the statutory provision existed.

(b) On parity of reasoning, a clarificatory binding circular issued under section 168 (1) of the CGST Act,2017, is also having **retrospective effect**, as the Board's Circular merely expounds what the statutory provision, (connotation of "intermediary" and "intermediary services") really meant and was/is expected to be so implemented. Section 168 (1) of the CGSTT Act reads:

> **SECTION 168. Power to issue instructions or directions.** — (1) The Board may, if it considers it necessary or expedient so to do **for the purpose of uniformity in the implementation of this Act,** issue such orders, instructions or directions to the central tax officers as it may deem fit, **and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.**

(C) At that stage a request was made to grant a few days' time to submit appropriate case law. Request was graciously granted.

Accordingly, the Applicant /Appellant submit the following case laws to substantiate its submissions.

Well settled Legal Position:

7. There are two aspects:

(a) Whether the Order passed by a statutory authority (AAAR) is liable to be corrected/rectified based a ruling of the High Court / the Supreme Court handed down on a date subsequent to the date the Order to be rectified is passed?

- Answer: The law declared by the Hon. Supreme Court or The Jurisdictional High Court Operates 'Retrospectively'
- Case Laws:

(i) In M.A. Murthy vs. State of Karnataka [2003] 185 CTR 194 (SC), the Honourable Court has held as under:

"Normally, the decision of this Court enunciating a principle of law is applicable to all cases ***irrespective its stage of pendency*** *because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception".*

- It further states that:

"It is for this Court to indicate as to whether the decision in question will operate prospectively. ***In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision****. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling".*

(ii) Salmond on Jurisprudence, Tenth Edition, by Glanville L. Williams at page 189 states as follows:

"... the theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision ***is a declaration that the supposed rule never was law****. Hence, any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision.* ***The***

overruling is retrospective, except as regards matters that are res judicata, or accounts that have been settled in the meantime."

(iii) Hon'ble Punjab and Haryana High Court have in the case of Commissioner of Income Tax Vs. Smt. Aruna Luthra [2001] 170 CTR 0073 (P&H) held as under:

"A Court decides a dispute between the parties. The cause can involve decision on facts. It can also involve a decision on a point of law. Both may have bearing on the ultimate result of the case. ***When a Court interprets a provision, it decides as to what is the meaning and effect of the words used by the legislature.*** *It is a declaration regarding the statute. In other words, the judgment declares as to what the legislature had said at the time of the promulgation of the law.* ***The declaration is – This was the law. This is the law. This is how the provision shall be construed."***

(iv) In this regard, recently Hon'ble Supreme Court in the case of Mepco Industries Ltd. Vs. CIT [2009] 319 ITR 208 (SC), has held as under:

– **"In case subsequent judgment lays down a principle of law, then it will be applicable across the board and based on the same rectification, can be done";**

It is submitted that from the abovementioned various judicial pronouncements, it appears, in matters relating to principle of law, proceedings for rectification of mistakes can be initiated based on the contrary view taken by the jurisdictional High court or Supreme Court on a date subsequent to the date of passing of the Order proposed to be rectified.

BOARD'S CIRCULARS: BINDING ON THE DEPARTMENT:

8. The **second aspect** is whether on the parity of reasoning, the application for rectification can be moved based on the Board' "clarificatory" Circular issued under section 168 of the CGST Act, 2017, which is in nature?

(a) In this context, it is necessary to refer to the law laid down by the Honourable Supreme Court on the question of binding nature of such type of Circulars issued under the provisions of the statute. While the decision/s quoted below are under Section 37B of the Central Excise Act, 1944, the same would hold good because the new Section 168 (1) of the CGST Act, 2017 **is in identical terms,** and reads:

> **SECTION 168. Power to issue instructions or directions.** — (1) The Board may, if it considers it necessary or expedient so to do for the purpose of **uniformity in the implementation of this Act**, issue such orders, instructions or directions to the central tax officers as it may deem fit, ***and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.***

(b) In the case Paper Products Ltd. Vs. Commissioner of Central Excise, 1999 (112) E.L.T. 765 (S.C.) the Honorable Apex Court held:

(i)Departmental clarifications - ***Circulars issued by C.B.E. & C. are binding on the departmental authorities and they cannot take a contrary stand***–Department cannot repudiate a Circular issued by the Board on the basis that it was inconsistent with a statutory provision -....

(ii) Department's actions have to be consistent with the Circulars - All actions of the revenue department have to be consistent ***with the Circular which was in force at the relevant point of time*** –

In this context, it is relevant to note that the Circular dated 18th July 2019, expressly

states that various representations were received expressing "doubts" and hence the clarification is being given as to the true purport of the term "intermediary" and "intermediary services". Obviously, the Circular is clarificatory in nature and shall apply "retrospectively".

- The settled law is as follows:
- In Zile Singh v. State of Haryana and Ors. [2004 (8) SCC] the Honorable Supreme Court held:

> *14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form.* ***If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively.*** *An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.* ***It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended****.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).*

9. From the above discussion, it is manifestly clear that the Law declared by the Constitutional Court or the Board's Circular issued on "**the date subsequent to the date of passing the order**", expounding, explaining or interpreting the "prevailing" or "existing" law, has to be read as **extant on the date of the impugned Order** dated 22-03-2019, and if the said order is not in conformity with the law/circular, then surely, it is liable to be "amended" to be brought in line with the law/circular.

Additional submissions filed on 06.12.2019

10. A Post-Hearing Brief Note dated 27th November 2019 was submitted taking a two-pronged stand that the impugned Order dated 22nd March 2019 ex-facie

demonstrated grave and serious errors of law: (1) failure to exercise Jurisdiction to determine liability to pay tax, (2)non-consideration of binding CBIC Circular dated 18th July 2019, clarifying and expounding meaning and true scope of the expression: "intermediary services", which had direct bearing on the case in hand.

11. It was urged that in the interest of justice, the impugned Order dated 22nd March 2019 be "amended", called –back, and the case re-considered in the light of the Circular of 18th July 2019.

12. Thereafter, a shocking development took place on 4th December 2019, when the Board (CBIC) **dramatically took a "U-turn", which has propelled this "Supplement".**

The Board declared:

QUOTE:

"Subject: **Withdrawal of Circular No. 107/26/2019-GST dt. 18.07.2019 – reg.**

Kind attention is invited to Circular No. 107/26/2019-GST dated 18.07.2019 wherein certain clarifications were given in relation to various doubts related to supply of Information Technology enabled Services (ITeS services) under GST.

2. Thereafter, numerous representations were received **expressing apprehensions on the implications of the said Circular.** In view of these apprehensions and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, **hereby withdraws,** *ab-initio,* **Circular No. 107/26/2019-GST dated 18.07.2019."**

UNQUOTE:

13. In these circumstances, the Applicant /Appellant most respectfully submit and urge:

(a) That the impugned Circular dated 4th December 2019 has to be construed as "operating prospectively", that is, from 04-12-2019 and "**NOT retrospectively**" as stated: "hereby withdraws, ***ab-initio,*** Circular No. 107/26/2019-GST dated 18.07.2019.

(b) That the Section 168(1) of the CGST Act does not confer on the Board any "legislative power like farming Rules or Regulations", but admittedly and ex-facie the power to be exercised is "administrative/executive" in nature: "*to ensure uniformity in the implementation of the provisions of the law across field formations", an Administrative duty or function*.

(c) That the Rajasthan High Court, in **Gopi Krishna vs. State of Rajasthan** on 6 February, 1987, (1987 WLN UC 276) succinctly stated:

QUOTE:

"17. A distinction is to be drawn between administrative/executive order or circular and the rules framed in exercise of the powers given under some Act. Such rules have statutory force and can be made effective retrospectively or prospectively as the circumstances require, even rules cannot be effective retrospectively in all cases, ***as is evident from the following principle enunciated by the Hon'ble Supreme Court in the case of the Accountant General and another v. S. Doraiswamy and Ors. (Decided on 13-11-1980):***

> "It is settled law that unless a statute conferring the power to make rules provides for the making of rules with retrospective operation ***the rules made pursuant to that power can have prospective operation only".***

18. The administrative/executive order cannot be made effective retrospectively. The question of the retrospective effect of an administrative order had been the subject of discussion in a number of cases.

19. In the case of State of Haryana v. Dev Dutt 1970 SLR 776 such a question came for consideration before the Court and *it was held that administrative order takes effect from the date it is communicated to the person concerned.*

20. Similar principle was enunciated in the case of Harbhajan Singh v. State of Punjab 1975 SLWR 483 and ***it was observed that the***

administrative/executive order is effective from the date of communication or <u>otherwise published in appropriate manner.</u>

21. The administrative/executive orders and circulars are made to meet with the exigencies of a particular time or situation. They do not fall in the line of Rules and Regulations framed under any Act or the Constitution of India. *As such the administrative/executive orders passed at a particular time to meet a particular situation* ***<u>would be effective only prospectively."</u>***

(d) In **Paper Products Ltd.**1999 (112) E.L.T. 765 (S.C.), the Honorable Supreme Court said:

> **"Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, *<u>the same will have to be consistent with the Circular which is in force at the relevant point of time." [paras 4, 5]</u>***

- As mentioned earlier in the Brief Note, a Rule, Law or Circular, which is "clarificatory" in nature, operates retrospectively from the date the statutory provision is extant; and hence the Circular 18th July 2019, will hold good right from the 1stJuly 2017, as there is no change in Section 13 (8) (b): "intermediary Services".

- **In conclusion:**

It is submitted that <u>the "withdrawal" of Circular dated 18th July 2019, will be effective ONLY ON AND FROM 4th December 2019,</u> and **NOT 'ab initio' FROM 18th July 2019,** in view of the settled law, as discussed herein above.

14. The abovesaid personal hearing was also attended by Shri T.N. Godse, Asstt. Commr. Of State Tax in the capacity of the Jurisdictional Officer, wherein he filed and reiterated the written submissions, which is being reproduced herein under:

15. "Intermediary" in simple terms is explained as a firm or a person who acts as a link between parties for conducting business. Applicant is providing services as Intermediary.

16. As per section 2(13) of the IGST act 2017 "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 supplies such goods or services or both or securities on his own account.

17. From above we find that "Intermediary" means a broker, an agent or any other person who arranges or facilitates the supply of goods or services or both between two or more persons and who cannot change the nature of supply as provided by the Principal.

18. MI is covered by the said definition of "Intermediary" because they are acting as a facilitator for the process of sale of material by their foreign Principals to the Indian parties because they locate the customer, negotiate the prices and ensure the probable sale. They also provide discount to the said customers out of the commissions received by them as mentioned in the purchase orders. It is very clear from the facts of transaction that the applicant is neither providing services nor supplying the goods on their own account.

19. Even applicant at point no 5 of their submission have clearly mentioned that the services provided by them in the instant case would be termed as "taxable services" under the GST Regime because they do some activity for which monetary consideration that is 'Commission" amount is received by them.

20. As per section 13(8)(b) of the IGST Act 2017 the place of "Intermediary Services" shall be the location of the supplier of services. In this case the applicants place of supply of services is in taxable territory the

21. The said intermediary services cannot be treated as export of services under the provisions of GST laws.

22. In order to classify as 'export of services' as per section 2(6) of the IGST act 2017 one of the crucial conditions as contained under sub section (iii) the place of supply of service should be outside India. In this case the place of supply shall be the location of the supplier of services and therefore such "Intermediary Services" cannot be classified as "export of services".

23. The appellants contention is that they are covered under the definition of "Intermediary" but the services being covered by them are not "Intermediary Services" are not tenable as they are clearly covered under the definition of "Intermediary" and the services being provided by them are clearly the services as given in the definition of "Intermediary". Hence the application is not maintainable.

24. West Bengal authority for advance ruling has recently on 21st march 2018 has given ruling in case of M/s Global Reach Education Services Private limited in one of such intermediary issues. The applicant promotes the courses of foreign universities among prospective students. It receives consideration in convertible foreign exchange. Applicant represents the university in the territory of India and acts as its recruitment agent and held as intermediary services and not export of services.

25. Question no 2:/f the answer is in the negative whether the impugned supply of service forming part of cross border sale/purchase of goods will be treated as an "intra-state supply" under section 8(1) of the /GST Act read with section 2(65) of the MGST Act attracting CGST/MGST? And if so what rate?

26. It would be necessary to discuss interstate provisions as well as intrastate provisions under the GST laws:

27. Section 7 of the Integrated Goods and Service Tax Act 2017 covers the interstate provisions. As no specific provisions are applicable for determining tax rate, residuary provision under section 7(5)(c) shall be made applicable in the case of Intermediary service. This section states that interstate supply of goods or services or both in the taxable territory shall be treated to be a supply of goods or services or both in the course of interstate trade or commerce. However, the same should not be an intra-state supply and should not be covered elsewhere under section 7 of the IGST act

28. Section 8 of the Integrated Goods and Services Tax act 2017 deals with the provision of intra state. Applying the provisions of section 8(2) which states that subject to the provisions of section 12, in case where the location of supplier and the place of supply of services are in the same state or in the same union territory the supply of service shall be treated as intra state supply.

29. As per intra state provisions contained in section 8(2), the said provisions are subject to the provisions of section 12 of the IGST act. As per section 12, the provisions of section 12 would be applicable only for determining the place of supply of service where the supplier of services and the location of recipient of the services is in India. When the recipient is located outside India the said provisions of section 12 cannot be made applicable. Provisions of section 8(2) are inter linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India.

30. In order to decide both the issues raised by the appellant place of supply of services provided would have to be decided. The applicant considering himself as an intermediary has asked for a ruling on whether the services qualify to be an export or intra state supply and these questions demand an examination of place of supply of the services. In order to answer both these questions we will first have to examine our jurisdiction laid out in section 97(2) of the CGST act 2017 as reproduced below:

a. classification of any goods or services or both under the act.
b. Applicability of the notifications issued under the provisions of the act.
c. Determination of time and value of goods or services or both.
d. Admissibility of input tax credit of tax paid or deemed to have been paid.
e. Determination of the liability to pay tax on any goods or services or both.
f. Whether the applicant is required to be registered under GST
g. 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 amounts to or results in a supply of goods or services or both within the meaning that term.

31. On perusal of the provisions it is seen that the place of supply has not been covered in the questions raised by the applicant. Hence his application of rectification under section 102 cannot be maintained and to be rejected for want of jurisdiction.

Discussions and Findings

32. Heard both the parties. We have also perused the submissions and documents placed before us. The limited issue before us was to ascertain whether there is any error which is apparent on the face of the record i.e. the impugned AAAR Order dated 22.03.2019 as envisaged under section 102 of the CGST Act, 2017.

33. In order to buttress their submissions as to the AAAR Order dated 22.03.2019 does have apparent errors on the face of the record, first, the Appellant drew analogy between the provisions laid out in section 102 of the CGST Act, 2017 governing the rectification of the advance ruling and the provisions of the Review Power provided in Order XLVII of the Civil Procedure Code 1908 by placing emphasis on the similar phraseologies i.e. **"any error apparent on the face of record"** used in section 102 of

the CGST Act, 2017 and **"mistake or error apparent on the face of the record"** used in Rule 1, Order XLVII of CPC, 1908, thereby, arguing that since the aforesaid phraseologies used in the section 102 of the CGST Act, 2017 and Rule 1 of the Order XLVII of CPC, 1908 are similar, the case laws pertaining to the Review matters would reasonably be applicable to the matter related to the rectification of the advance ruling. For the said purpose, they cited few judicial pronouncements, which are being mentioned herein below:

(i) Satya Narayan Laxmi Narayan Hegde Vs. Malikarajun Bhavanappa Tirumale [AIR (1960) SC 137]

(ii) T.S. Balaram, ITO Vs. Volkart Bros. [(1971) 82 ITR 50 (SC)]

(iii) Sir Hari Shankar pal and Another Vs. Anath Nath Mitter and others [1949 FCR 36]

(iv) Parsion Devi and Others Vs. Sumitri Devi and Others [1997 (8) SCC 715]

(v) Ruling pronounced by CESTAT in the case of Dinkar Khindria Vs. CCE, New Delhi, 2000 (38) RLT 442;2000 (118) ELT 77 (T-LB)

34. Having relied upon the above cited judgments, it was submitted by the Appellant that the Appellate Authority for Advance Ruling had committed an error apparent on the face of records, as it did not apply its mind to the true meaning purport of the expression "intermediate services" and without discussing its ramifications on the issue at hand, disposed of the case "declaring that it has no jurisdiction" to give any opinion or verdict, because it lacked the basic jurisdiction to "determine place of supply" under section 97(2) of the CGST Act, 2017.

35. As regards the aforesaid allegation, it is opined that the arguments put forth by the Appellant is preposterous and irrational, as the primary issue raised by the Appellant in the advance ruling application was to determine as to whether the services rendered by the Appellant was export of service or not, and not the classification of services as is being made out by the Appellant vide the submissions being made in present application. Vide the impugned Order dated 22.03.2019, we had decided that since issue of determination of the export of services invariably requires the determination of the place of supply of services, which is not specified among the list of questions/issues, provided under section 97(2) of the CGST Act, 2017, on which advance ruling is sought under the GST Act, the advance ruling on the said question

cannot be given. In view of this, we did not go into the details of the nature of services being rendered by the Appellant to their clients, as the same was not considered relevant in the context of the question asked by the Appellant. Hence, we did not find worth in discussing the issue as to whether the Appellant's services would fall under the ambit of the intermediary services as defined under section 2(13) of the IGST Act, 2017 or not. Hence, the allegation levelled by the Appellant as to the Appellate Authority had not applied its mind to true purport of the expression "intermediary services" is without merit, and therefore, not sustainable.

36. As regards the Appellant's contention that the subject issue raised by the them regarding the determination of the export of service would be covered under section 97(2)(e) of the CGST Act, 2017, we would like to examine the aforesaid provision, which is being reproduced herein under:

"(2) The question on which the advance ruling is sought under this Act, shall be in respect of, -

(a).....

(b).....

.....

(e) determination of the liability to pay tax on any goods or services or both;

.....

Here, it is pertinent to mention that under the GST law, there are certain goods and services, which have declared either as non-taxable supplies or as an exempt supply in terms of section 2(78) and section 2(47) of the CGST Act, 2017. While Schedule III to the CGST Act, 2017 enumerate the activities or transactions which shall be treated neither as a supply of goods nor a supply of services, goods and services, which have been declared exempt supply are notified by the Notification No. 2/2017-C.T. (Rate) dated 28.06.2017 and Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 respectively. Therefore, we are of the opinion that provision of section 97(2)(e) of the CGST Act, 2017 gives us the jurisdiction to decide whether any goods or services or both are liable to GST or not. The aforesaid provision does not enable us to determine the place of supply of any goods or services or both. Hence, the Appellant has misinterpreted the provision of section 97(2)(e) ibid. in much as they believe that the said provision confers on the Advance Ruling Authority or the Appellate Authority for

the Advance Ruling the jurisdiction to determine even the place of supply in respect of goods or services or both. Thus, it is discernible that there is clearly dispute in the interpretation by the Appellate Authority and that of the Appellant with regard to section 97(2)(e) of the CGST Act, 2017.

37. Now, we would like to refer to the principles of law laid down by the Hon'ble Supreme Court in the above cited cases, which have been relied upon the Appellant to support their submissions:

In the case of T.S. Balaram, ITO Vs. Volkart Bros., wherein the Hon'ble Apex Court held as under:

'Mistake' is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record, from which it is supposed to emanate are discerned. The word 'mistake' is inherently indefinite in scope, as to what may be a mistake

for one may not be one for another. It is mostly subjective and dividing line in border areas is thin and indiscernible. It is something which is a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under section 154, it is not sufficient if there is merely a mistake in the orders sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word 'apparent' is that it must be something which appears to be so ex facie and it is incapable of argument or debate .... "

In Sir Hari Shankar Pal and another vs. Anath Nath Mitter and others [1949 FCR 36], a Five Judges Bench of the Federal Court (predecessor Court to the Supreme Court), while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position was similar to that of the successful appellant, held :

"That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously) the error could not be

one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order XLVII, Rule 1, Civil Procedure Code."

In Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8) SCC 715], it was held as under: -

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self- evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"."

Similar views are expressed by a Larger Bench of the Appellate Tribunal (CESTAT) in the case of Dinkar Khindria v. CCE, New Delhi, 2000 (38) RLT 442; 2000 (118) E.L.T. 77 (T-LB) has held that "rectification of mistake is by-no means an appeal in disguise whereby an order even if it is not valid, is re-heard and re-decided. Rectification of mistake application lies only for patent mistake. Only in a case where the mistake stares one in the face and there could reasonably be no two opinions entertained about it, a case for rectification of mistake could be made out." Larger Bench also held in that case that "the decision on a debatable point of law or facts is not a mistake apparent from the record and the debatable issue could not be the subject of an order of rectification. Rectification of mistake does not envisage the rectification of an alleged error of judgment."

38. In all the above cited cases, it is invariably laid out by the Hon'ble Courts that the *mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word 'apparent' is that it must be something which appears to be so ex facie and it is incapable of argument or debate. Thus,* Rectification of mistake does not envisage the rectification of an alleged error of judgment."

39. Now, applying the ratio of the above judicial pronouncements, cited by the Appellant in the facts and circumstances of the present case, it can adequately be inferred that since there is dispute in the interpretation of the legal provisions of section 97(2)(e) of the CGST Act, 2017, which certain leaves the scope for argument and debate, there is absolutely no question of any error apparent from the face of record, as was being made out by the Appellant. Thus, the allegations, made by the Appellant with regard to the error crept in the impugned AAAR Order dated 22.03.2019, which is apparent from the face of record, is without any rationale, and hence do not merit consideration.

In view of the above discussions, we pass the following order:

ORDER

We, hereby, reject the application filed by the Appellant under section 102 of the CGST Act, 2017 seeking the amendment in the AAAR Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019.

(RAJIV JALOTA)
MEMBER

(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Respondent.
6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
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