

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/03/2019-20 **Date- 02.08.2019**

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER
(2) Shri Rajiv Jalota, MEMBER

Name of the Appellant	Commissioner, CGST, Mumbai East
Details of appeal	Appeal No. MAH/GST-AAAR-03/2019-20 dated 06.05.2019 against Advance Ruling No. GST-ARA-52/2018-19/B-160 dated 19.12.2018
Legal Name of the Respondent	NES GLOBAL SPECIALIST ENGINEERING SERVICES PRIVATE LIMITED
GSTIN Number/User Id	27AACCN9033FIZ1
Registered Address/Address provided while obtaining User Id/GSTIN	409 B, Kanakia Wall Street, Chakala, Andheri Kurla Road, Mumbai-400 093

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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.

The present appeal has 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 Commissioner, Central Tax, Mumbai East Commissionerate (herein after referred to as the "Appellant" or "the Department" interchangeably) against the Advance Ruling No. GST-ARA-52/2018-19/B-160 dated 19.12.2018



BRIEF FACTS OF THE CASE

- A. The M/s. NES Global Specialist Engineering Services Pvt. Ltd. (hereinafter referred to as the "respondent") had filed application under Section 98 of CGST Act, 2017 read with Rule 104(1) of CGST Rules 2017 seeking advance ruling on:

Question 1: whether the transaction in question was a zero- rated supply or a Normal supply under the GST Act.

Question 2 if the said supply was zero rated supply, then whether the same could be considered as an export of service under GST Act

- B. The respondent is engaged in providing supply of manpower services to highly technical industries such as Oil & Gas, Power etc.
- C. The respondents and M/S NES Talent Recruitment services (hereinafter referred to as 'NES Abu Dhabi') having its registered office at Unit No 104, Business Avenue Tower, Abu Dhabi had proposed to enter into a service agreement through which the respondents would provide support service in respect of foreign business carried out by NES Abu Dhabi.
- D. Both the respondents and NES Abu Dhabi are subsidiaries of the parent NES Global Ltd, UK.
- E. Every service provided by the respondents would form part of Master Service agreement (hereinafter referred to as MSA) and its schedule in detail.
- F. The respondents had not submitted the Master Service Agreement in detail but a draft intercompany service agreement (hereinafter referred to as ISA)
- G. It was therefore submitted before the ARA regarding the questions put forth in the advance ruling applications that since the respondents failed to produce the MSA and also original ISA prayed for rejection of the application.
- H. The ARA in its order No GST-ARA-52/2018-19/B-16 dated 19.12.2018 received on 11.03.2019 held that the transaction in question was a zero- rated supply and the supply were held to be the export of service under the GST Act.



Grounds of Appeal

1. As per section 182 of the Indian Contract Act, 1872 'an agent is a person employed to do any act for another, or to represent another in dealing with the 3rd person, the person for whom such act is done, or who is to be represented is called a 'principal'.
2. In view of above, agent wears two hats. On close examination of the act of an agent, it will transpire that it is not the contract between the agent and principal which decides the question as to whether the person is an agent or not. Actually, it is the involvement of 3rd person which decides the question if a person is an agent or not. The Advance Ruling authority decided the question of status of the applicant only on the basis of their entering into a contract with NES Abu Dhabi as an independent contractor. In fact, every person including an agent is an independent contractor. Therefore, the fact that the applicant entered into Master Service Agreement (MSA) as an independent contractor cannot decide whether the applicant is an agent or not. As per draft MSA the applicant NES India is supplying following services to NES Abu Dhabi
 - a. Purchases Invoices bookings for various costs such as Visa, Immigration, labour cancellation charges, Medical expenses of various contractors of NES Abu Dhabi;
 - b. Invoice bookings for all overheads;
 - c. Creating Invoices to various clients;
 - d. Booking expenses of contractors;
 - e. Bank reconciliation of all bank accounts;
 - f. Vendor reconciliation for all vendors;
 - g. Cash receipts entries posting;
 - h. Bank payment entries posting;
 - i. AR postings;
 - j. Payroll assistance;



- k. Support assignment work;
 - l. Scanning and storing data in the shared folder of NES Abu Dhabi.
 - m. General consultancy services provided for accounting, Payroll, Taxation etc and any other work which would require to do as per the request.
3. Out of the above list of services, it may be seen for instance that services of 'Manpower Recruitment & Supply' may be provided both with and without involvement of a 3rd person. The applicant's activities related to visa and immigration indicate the applicant may be recruiting manpower for NES Abu Dhabi. If that is the case, the applicant can be held to be a principal only if they first recruit the manpower on their own account and then supply it to NES Abu Dhabi. However, if the applicant recruits the same manpower not on his own account but on account of NES Abu Dhabi, they cannot be held to be a principal due to presence of 3rd person. In that case, the applicant would be acting as an intermediary / agent who brings NES Abu Dhabi and the persons willing for Job together.
4. Due to above said diverged possibilities, this office prayed to the Advance Ruling Authority to enable this office to examine the end to end transactions of the list of services provided in order to ascertain the true nature of the activities of the applicant.
5. However, the Advance Ruling Authority failed to appreciate the vital importance of the said key information about the end to end transactions of the applicant. AR Authority also failed to appreciate that the subject agreement between applicant and M/s. NES Abu Dhabi is a not final agreement but merely draft agreement.
6. In view of the above, it is prayed that applicant should be directed to share the relevant information with the Commissioner including the nature of various transactions, mode of transaction as to whether same are performed on line or manually, step wise and systematically end to end process of all such different types of transactions so that the office may get an opportunity to examine the fact as to whether the applicant is providing the subject service on his own



account or merely working as a link between some 3rd parties and M/S NES Abu Dhabi.

7. The Appellant, inter-alia, have also prayed, vide the Misc. Application filed for the condonation of the delay in filing the appeal, that the delay in the filing of the appeal may be condoned, which they attributed to the initial teething problem being faced by them after the introduction of the GST regime.

Appellant' Additional Submissions dated 25.07.2019

8. The Appellant vide their additional Submission dated 25.07.2019 argued that the Ruling given by the Advance Ruling Authority is not in sync with provisions of Section 97(2) of the CGST Act, 2017, which prescribes the specified questions on which the advance ruling is sought under this Act. They further submitted that the Advance Ruling Authority have, by giving the Ruling on the subject questions involving the export of supply of the impugned services, which is not specified in the abovementioned set of the specified questions prescribed under Section 97(2) of the CGST Act, 2017, exceeded its jurisdiction. Hence, they pleaded to set aside the impugned Advance Authority Ruling on this said ground. To undergird this submissions, they placed their reliance on the Maharashtra AAAR Order No. MAH/AAAR/SS-RJ/01/2019-20 dated 19.06.2019 passed in the case of the M/s. Asahi Kasei India Pvt. Ltd., wherein Members of AAAR ruled as under:

"we cannot pass any ruling in relation to the export of services, as the same would require the determination of the place of supply of service, which is not under jurisdiction and scope of the Advance Ruling Authority."

Respondent's Submissions

9. **Justification for considering the transaction as export of service.**

It is the fact that at the time of submission of application the agreement was under execution and hence it was mentioned as "Draft". (Refer the Letter dated July 5,2018). However, we respectfully submit that during the proceeding before the Advance Ruling Authority (ARA), The learned CGST Officer had informed in last hearing dated 12.12.2018 that the copy of Master Service Agreement (MSA)



had not been produced for verification. We informed that that the Service Provider , NES Global Specialist Engineering Services Private Limited (NES India) and the Service receiver, NES Global Talent Recruitment Services (NES Abu Dhabi) are associate concerns and had made an “**INTER COMPANY SERVICE AGREEMENT** “ and the same had been furnished with them , already vide submission dated 03.09.2018, as acknowledged on 04.09.2018, and the same be considered as MSA, for all purposes, and requested to waive the variation in Nomenclature, if any. For the sake of the brevity, the said agreement enclosed. Hence, we reiterate to waive the nomenclature and consider the same as MSA, at this juncture.

10. Further we submit that the *transaction between* NES India and NES Abu Dhabi wherein involved in the supply of services on its own account. There is only involvement with two Parties, as such. Hence In such a scenario, the supplier will not fall under the ambit of intermediary provided under sub-section (13) of section 2 of the IGST Act, where these services are provided on his own account by such supplier. We rely on Circular No. 107/26/2019-GST, dated the 18th July, 2019, issued by Central Board of Indirect Taxes and Customs, CBIC, where the identical issue considered.
11. In view of the above submissions, the Respondent has pleaded to sustain the ruling given by the Advance Ruling Authority, wherein they held the transactions between the Respondent and NES Abu Dhabi as the export of services and the supply made by the Respondent to be zero rate supply.

Personal Hearing

12. A personal Hearing in the matter was conducted on 26.07.2019, wherein the Jurisdictional officer Shri Rahul Kumar Yadav, D.C., representing the Appellant firstly prayed for the condonation of the delay in filing the appeal citing the reasons and circumstances precluding them from filing appeal on time and then proceeded to reiterate the written submissions made at the time of the filing of the appeal before us. During the time of the personal hearing, the Appellant put forth their contention vide the additional submissions dated 25.07.2019 which



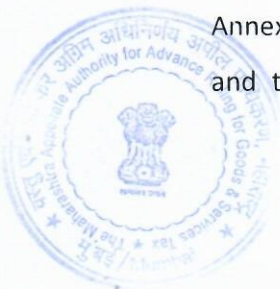
have been reproduced herein above. Shri Raveendran P.M., appearing on behalf of the Respondent did not oppose the delay condonation application filed by the Department/Appellant. However, he countered the Appellant's submissions and their grounds of the appeal vide their submissions, made before us, during the time of the personal hearing.

Discussion and Findings

13. Heard both the parties and have also gone through the facts of the case and written submissions made by the Appellant as well as Respondent.

We observe that there is a delay of 26 days in filing the said appeal by the appellant and the Appellant has filed miscellaneous application for the condonation of the said delay of 26 days, wherein the Appellant, which happens to be the jurisdictional officer, has attributed the said delay of 26 days in filing of the instant appeal to the initial teething problem being faced by them in the implementation of the GST procedures after the introduction of the GST regime. After going through this miscellaneous application for the condonation of delay filed by the Appellant and grounds underscored by them, we are inclined to condone the said delay of 26 days, and allow the appeal filed before us in terms of proviso to sub section 2 of section 100 of the CGST Act 2017.

14. After allowing the appeal, we set out to discuss the instant appeal against the impugned Advance Authority Ruling, wherein the Authority of the Advance Ruling held that the transactions covered under the Master Service Agreement (Intercompany Service Agreement) entered between Respondent and NES Abu Dhabi are export of services under the GST Act, 2017 and accordingly held the supply as zero-rated supply in terms of the provision of Section 16 of the IGST Act, 2017.
15. On perusal of the facts and records of the case, placed before us, and considering all the written as well as oral submissions made by both the parties in light of the above stated impugned Advance Ruling, before undertaking the scrutiny of the nature of the activities of the Respondent ingrained under Annexure A to the subject MSA/ICSA Agreement, we seek to examine the scope and the jurisdiction of the Advance Ruling, and Appellate Authority for the



Advance Ruling for Goods and Services Tax, which have been explicitly provided under Section 97(2) of the CGST Act, 2017, which is being reproduced herein under for our reference:

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

- (a) Classification of any goods or services or both under the Act;*
- (b) Applicability of a notification issued under the provisions of the Act;*
- (c) Determination of time and value of the goods or service or both;*
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;*
- (a) Determination of the liability to pay tax on any goods or services or both;*
- (b) Whether the applicant is required to be registered under GST;*
- (c) 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 that term.*

16. On perusal of the above provision, we find that question on determination of the place of supply has not been covered in the above set of questions, on which the advance ruling can be given. Therefore, we do not have jurisdiction to pass any ruling on such questions which involve the determination of the place of supply of the goods or services or both.
17. Now, coming to the present case, we observe that Respondent had filed application before the Advance Ruling Authority asking for ruling as to whether the services being provided by them to their overseas client i.e. M/s NES Abu Dhabi in terms of the subject MSA Agreement will be export or not and whether the same would be zero-rated supply or not.
18. It is worthwhile to mention that for any supply of services to be considered as export, one has to examine the place of supply of services as per the conditions prescribed under Section 2(6) of the IGST Act, which is being reproduced as under:

(6) ‘export of services’ means the supply of service when: -

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*



(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.

19. Thus, in view of the above provision laid down in respect of the export of services and the above discussed provision laid down in Section 97(2) of the CGST Act, 2017 encompassing the specific questions, which are to be sought under the Advance Ruling, it can decisively be inferred that the questions raised by the Respondent before the Advance Ruling Authority were beyond the scope and jurisdiction of the Advance Ruling, and hence do not warrant any ruling thereon.

20. In view of the above rationale, the Advance Ruling Authority should have refrained from passing any ruling on the above mentioned two questions asked by the Respondent vide the Advance Ruling application filed before the Advance Ruling Authority. However, the Advance Ruling Authority have passed the ruling in the instant case by exceeding its jurisdiction, we hereby set aside the impugned ruling passed by the Advance Ruling Authority and pass the following order:

We hold that that since the questions asked by the Appellant are not covered under the scope and jurisdiction of the Advance Ruling, no advance ruling in this regard can be passed.

(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

7. Office copy