

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJA 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

SMT. RANJANA JHA, MEMBER

SMT. SHIKHA C, MEMBER

ORDER NO.KAR/AAAR/06/2022

DATE: 21.11.2022

Sl. No	Name and address of the appellant	M/s Myntra Designs Pvt Ltd, Sy No 8 to 14 and 55, Alyssa Begonia Clover Embassy Tech Village, Outer Ring Road, Devarbisanahalli Varthur Hobli, Bengaluru Urban, 560103
1	GSTIN or User ID	29AAECM9636P1ZJ
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 19/2022 Dated: 1 st July 2022
3	Date of filing appeal	06-09-2022
4	Represented by	Shri. Tarun Gulati, Senior Advocate & Shri. Kishore Kunal Advocate
5	Jurisdictional Authority- Centre	The Principal Commissioner of Central Tax, Bangalore East Commissionerate.
6	Jurisdictional Authority- State	LGSTO 016, Bengaluru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs 20,000 /- (CGST & SGST) paid by debit in Electronic Cash Ledger vide Debit Reference No DC2908220042379 dated 10-08-2022.

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 M/s Myntra Designs Pvt Ltd, Sy No 8 to 14 and 55, Alyssa Begonia Clover Embassy Tech Village, Outer Ring Road, Devarbisanahalli Varthur Hobli, Bengaluru Urban, 560103 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 19/2022 dated 1st July 2022.

Brief Facts of the case:

3. The Appellant owns an e-commerce portal www.myntra.com and is a major Indian fashion e-commerce company. The Appellant is engaged in the business of selling of fashion and lifestyle products through the said e-commerce portal. In furtherance of its business, the Appellant entered into an Advertising Agreement with Lenzing Singapore Pte Ltd, a company registered in Singapore, in terms of which the Appellant is providing advertisement space to Lenzing on their e-commerce portal, mobile application or any other online platform of the Appellant. The advertisement material in the form of impressions will be provided by Lenzing to the Appellant for placement on the e-commerce portal website. The Appellant has no concern with the prospective customers of Lenzing. The Appellant is only involved in providing space on the web-platform to a non-resident foreign company for placing and displaying graphical impressions of advertisement material for a consideration.

4. Given that the activity is for a non-resident which is outside India and the consideration is received in foreign exchange, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following questions:

- a. *"Whether the transaction of providing space on its web portal for advertisements provided by a foreign entity ie Lenzing Singapore Pte Ltd for a consideration, is taxable?"*
- b. *"Consequently, what will be the correct classification of the services provided and rate of tax on the transaction of providing space on its web-portal for advertisements provided by a foreign entity i.e Lenzing Singapore Pte Ltd?"*

5. The AAR vide its order KAR ADRG No 19/2022 dated 1st July 2022 gave the following ruling in respect of the above questions:



a. No Advance ruling is given on question (a) above, as the question involves the determination of place of supply which is outside the jurisdiction of this Authority.

b. The services provided by the Applicant are classified under SAC 998365 which reads "Sale of internet Advertising Space (except on commission)" and the same is chargeable to CGST at 9% and SGST at 9% as per SL.No 21 of Notification No 11/2017 CT (Rate) dated 28-06-2017.

6. Aggrieved by the lack of ruling given by the AAR on the issue of taxability of the transaction, the Appellant has filed this appeal on the following grounds.

6.1. At the outset, the Appellant makes it clear that they are not aggrieved by the ruling given regarding the classification of the transaction with the foreign entity. The challenge in this appeal is only against the decision of the AAR not to decide on the issue of taxability on the ground that the place of supply needs to be determined which does not fall under the scope of permissible issues to be determined by the Authority. They submitted that a bare perusal of the question framed by the Appellant discloses that the Authority was required to decide the taxability of the transaction between the Appellant and Lenzing which was completely within the purview of jurisdiction conferred on the Authority in terms of Section 97(2)(e) i.e "determination of the liability to pay tax on any goods or services or both. However, despite the specific enabling provisions of Section 97(2)(e), the AAR has refused to decide the first question relating to taxability of the transaction between the Appellant and Lenzing. They submitted that the Authority has failed to acknowledge that clause (e) of Section 97(2) is wide enough to include a question whether the activity amounts to export and hence, taxable or not.

6.2. They drew reference to the Central Excise Act, 1944 and the Finance Act, 1994 wherein a distinction was created on the jurisdiction of the High Court and Supreme Court in entertaining appeals from the Tribunal when the question of law related to the determination of rate of duty. They relied on the decision of the Karnataka High Court in the case of CST vs Scottwilson Kirkpatrick (2011 (23) STR 321 (Kar)), wherein the Hon'ble High Court held that the jurisdiction of the High Court does not extend to question relating to whether any services are taxable services or not; that further, the Delhi High Court in the case of CST, New Delhi vs Menon Associates reported in 2017 (49) STR 284 (Del) held that the issue



relating to export of service would be brought under the phrase 'determination of rate of duty/tax/value of goods or services'. Therefore, applying the above principles, the question of whether a supply is export or not directly relates to the determination of liability to pay tax and hence admissible for advance ruling in terms of Section 97(2)(e) of the CGST Act.

6.3. The Appellant relied on the Kerala High Court decision in the case of Sutherland Mortgage Services INC vs Principal Commissioner reported in 2020 115 taxmann.com 82 (Kerala) wherein the Hon'ble High Court had dealt with the provisions of Section 97(2)(e) of the CGST Act in the context of jurisdiction of the Advance Ruling to decide whether any transaction amounts to export or not; that the Hon'ble High Court had held that there cannot be any two arguments that the issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfils the definition of place of service, would also come within the ambit of the larger issue of 'determination of liability to pay tax on any goods or services or both' as envisaged in clause (e) of Section 97(2) of the CGST Act. They submitted that the above judgment of the Kerala High Court is binding on the Authority in the absence of any contrary decision by the jurisdictional High Court and therefore, the impugned ruling is liable to be set aside.

6.4. The Appellant also drew attention to the decision of the Karnataka Appellate Authority for Advance Ruling in the case of Workplace Options India Pvt Ltd wherein the Appellate Authority had followed the decision of the Kerala High Court in the case of Sutherland Mortgage Services INC and held that the AAR has the jurisdiction to pass a ruling on the issue of place of supply. Similar such decisions relying on the Kerala High Court judgement in Sutherland Mortgage Services INC, were passed by the Maharashtra AAAR in the case of Portescap India Pvt Ltd and Prettl Automotive India Pvt Ltd. In view of the above, the decision of the AAR not to exercise its jurisdiction to decide the issue of taxability deserves to be set aside.

6.5. The Appellant submitted that they are rendering the services of providing sale of internet advertising services to Lenzing located outside India against which the consideration is received in foreign exchange; that such a transaction will fall within the meaning of 'export of services' and consequently will be covered within the meaning of 'zero rated supply' under Section 16 of the IGST Act. They submitted that they meet the conditions laid down in Section 2(6) of the IGST Act which defines 'export of services' in as much as the Appellant is located in India, the recipient of service i.e Lenzing is located outside India, the place of

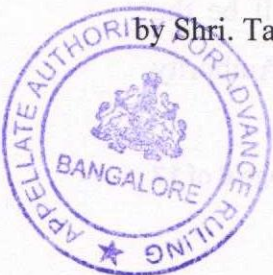


supply of service is outside India, the payment for such services has been received in convertible foreign exchange and the Appellant and Lenzing are not merely establishments of a distinct person. They relied on the decision of the Tribunal in the case of Commissioner of Service Tax, Mumbai vs Wall Street Finance Ltd – 2018 (14) G.S.T.L 373 (Tri-Mumbai) - in the erstwhile Service Tax regime where the export of service requirements were similar and where the Tribunal had held that although the service for advertising and promoting activities of foreign entity done in India, benefit of the same was received abroad and hence the activity amounted to export.

6.6. As regards the place of supply of the services provided to Lenzing, Singapore, the Appellant submitted that the said transaction is not covered by any of the clauses (3) to (12) of Section 13 of the IGST Act; that in their case, the default provisions of Section 13(2) will squarely apply and place of supply of services provided by the Appellant to Lenzing will be the location of the service recipient, which is outside India. Alternatively, they submitted that even if they were considered as providing OIDAR services since the definition of OIDAR service includes advertising on the internet, then by virtue of the provisions of Section 13(13) of the IGST Act, the place of supply will be the location of the recipient of services. Since in either case, be it by application of Section 13(2) or 13(13) of the IGST Act, the place of supply of service is the location of the recipient of service which is outside India, the Appellant qualifies as an exporter of service to Lenzing. Since the transaction entered into by the Appellant with Lenzing, Singapore amount to an export of service, it qualifies as a zero-rated supply and is thus non-taxable. In view of the foregoing, the Appellant pleaded that the impugned order to the extent that it does not decide ruling on question of taxability may be set aside; that it may be held that the AAR has the jurisdiction to decide the question involving the determination of place of supply and it may be held that the activity “Sale of Internet Advertising Space (except on commission)” falls within the meaning of export of service and hence a zero-rated supply and not taxable in India.

PERSONAL HEARING

7. The appellant was granted a virtual hearing on 27th September 2022. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. Tarun Gulati, Senior Advocate and Shri. Kishore Kunal, Advocate.



7.1. The Senior Advocate explained the facts of the case and the circumstances leading to the present appeal. It was submitted that the Appellant is an e-commerce operator engaged in the business of selling garments and lifestyle products through its portal. The Appellant has provided space on its web portal for advertisements of a foreign entity for which it receives consideration; that the Appellant had approached the Advance Ruling Authority for a ruling on whether the activity of providing space for advertisements of a foreign entity is taxable and if so what is the classification and rate of tax of the transaction with the foreign entity; that the Authority had given a ruling on the classification of service and rate of tax but had refrained from giving a ruling on the taxability of the activity. He submitted that even though the Authority had held that all other conditions for export of service were satisfied, they did not give a ruling on place of supply on the grounds that determination of tax liability will entail examining the provisions of place of supply which is not a subject covered under Section 97(2) of the CGST Act.

7.2. He submitted that determination of place of supply is incidental to determining the tax liability and this was clearly laid down by the Kerala High Court in the case of Sutherland Mortgage Services Inc. He also drew attention to the fact that the ratio of the said decision of the Kerala High Court was followed by this Appellate Authority in the case of the appeal filed by M/s Workplace Options India Pvt Ltd and this Authority had held that place of supply can be decided by the Advance Ruling Authority.

7.3. On the issue of taxability of the service of giving advertising space to a foreign entity, he submitted that the services provided by them qualifies in all respects as an 'export of service'. There is no disagreement with the findings of the Advance Ruling Authority that they meet the conditions in clauses (i), (ii), (iv) and (v) of Section 2(6) of the IGST Act which defines 'export of service'; that they also meet condition (iii) of the definition in as much as the place of supply is outside India and they justified this by relying on Section 13(2) of the IGST Act which they claim is applicable in their case. He submitted that no other sub-section in Section 13 applies to them. He also submitted that even if it was assumed that they are OIDAR service providers, even then, in terms of Section 13(12) of the IGST Act, the place of supply of OIDAR services will be the location of the recipient. He however made it clear that the Advance Ruling Authority



had already given a ruling on their service is classified as Advertising service which is accepted by them.

7.4. A query was made by the Bench drawing attention to Section 101 of the CGST Act wherein it is laid down that the Appellate Authority can pass an order as deemed fit, confirming or modifying the ruling. It was pointed out by the Bench that their order can only confirm or modify a decision already taken by the lower Authority. When the lower Authority has not decided anything, then there is nothing for this Authority to confirm or modify. It was also pointed out by the Bench that the Appellate court is not a court of equity and that this Authority cannot go beyond the power vested in the statute and hence it also does not have the power to remand the case to the lower Authority. In this connection, the Bench sought to know the nature of relief that the Appellant expects from this Authority.

7.5. In this connection, the Senior Advocate submitted that the powers of the Appellate Authority in most statutes are coterminous with the original authority; that the courts have held that the Appellate Authority is well within its powers to do what the original authority could have done or it could do more. Secondly, if the Appellate Authority has the power to either confirm or modify a decision, that power also includes the authority to decide a question which was otherwise admissible before the original authority. On the question of remand, he submitted that the Supreme Court had held that even if the remand provisions have not been specifically mentioned in the statute, the Appellate Authority has the inherent power to remand. He also drew attention to the words used in Section 101 and submitted that the phrase "pass orders as deemed fit" encompasses within it the power to pass any order, even a remand order. He drew a reference to Section 254 of the Income Tax Act wherein the phrase "pass such orders as it deems fit" as contained in the said Section was interpreted by the Supreme Court to mean that the Appellate authority has the power to pass an order or to remand the case. To this the Bench stated "as deemed fit" has a comma after it and not a full stop. Therefore, it has to be read in continuity with the rest of the statement as per principles of interpretation of statute. When reading the whole sentence this way it is clear that Section 101(1) can only confirm or modify the ruling appealed against. On this matter he promised to make detailed written submissions



along with the relied upon case laws on this question which has been specifically asked by the Bench. He sought for a week's time to make these additional submissions.

8. The Appellant made additional written submissions on 14.10.2022 with regard to the query raised by the Members of this Bench regarding powers of this Authority under Section 101(1) of the CGST Act to decide a question which was not decided by the AAR. In this regard they submitted that the Appellate Authority for Advance Ruling had been granted powers to pass such orders 'as it thinks fit' and which includes confirming or modifying the ruling appealed against; that the expression 'as it thinks fit' confers wide jurisdiction to decide on issues which are germane to taxability and are not restricted to questions specifically decided by the AAR. They submitted that the Appellate Authorities are vested with powers to pass orders which are necessary for not rendering the appellate remedy as infructuous or nugatory; that the appellate powers are an extension of original proceedings before the lower authorities and thus, vests powers to decide questions which are germane to the dispute involved. In the present facts, the AAR has erroneously and illegally not decided the issue relating to taxability of the services rendered by the Appellant to its customers. Therefore, in exercise of appellate powers, such questions can be decided by the Appellate Authority. In this connection, they relied on the Supreme Courts decisions in the case of Babulal Nagar and Ors vs Shree Synthetics Ltd and Ors (1984 (Supp) SCC 128) and ITO, Cannanore vs M.K. Mohammed Kuhni (AIR 1969 SC 430).

8.1. The Appellant further submitted that the powers of the Appellate Authority are co-terminus with that of the assessing/original authority and the Appellate Authority is vested with all the plenary powers which the original authority may have in a matter. Thus, where all necessary facts are already on record, the Appellate Authority can modify an order on any ground including any issue that the assessing/original authority ought to have decided but has failed to decide. In this regard they placed reliance on the following judicial pronouncements:

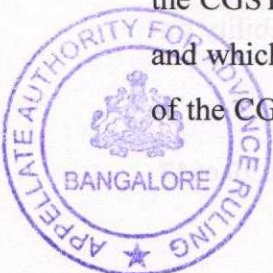
- a) CIT vs Kanpur Coal Syndicate, AIR 1965 SC 325
- b) Jute Corporation of India Ltd vs CIT & Anr, 1991 Supp (2) SCC 744
- c) Sesa Goa Ltd vs ACIT, [2020] 117 taxmann.com 548 (Bombay)
- d) ITO vs Tata Teleservices Ltd, [2022] 134 taxmann.com 323 (Delhi-Trib)



They also relied on the Supreme Court decision in the case of National Thermal Power Co Ltd vs CIT (1997) 7 SCC 489 wherein it was held that it is open to the appellate authority to decide on new grounds even if such grounds had not been raised and decided in the proceedings before the authorities below. In view of the above, they submitted that this Authority can modify the impugned order passed by the AAR and decide the issue of taxability which ought to have been decided by the AAR.

8.2. The Appellant submitted that the expression 'as it thinks fit' is not curtailed by use of 'comma' followed by the words 'confirming or modifying'; that modifying the ruling is an expression of widest amplitude and would include modification by correcting the non-consideration of judgment by the original authority and rendering the issue not decided by the original authority; that there is nothing in Section 101 which suggests that modification cannot include rendering a finding on an issue which was erroneously not decided by the AAR; that an appellate power cannot be construed in a manner which leads to making the very purpose of appeal redundant; that an interpretation which suggests that Appellate Authority cannot decide or grant relief on an issue which the original authority has erroneously not decided would mean that there would be no statutory remedy for such an error committed by original authority which is obviously not the intention of the statute. An appellate power is a power relating to remedies and has to be construed widely to make the remedy effective. Such powers cannot be interpreted in a manner which defeats the purpose of granting remedy itself which is to correct errors committed in the impugned order. The appellate remedy cannot be construed in a manner that leads to redundancy of the appellate powers and allows for perpetuation of an error committed in the impugned order.

8.3. The Appellant submitted that the term 'modifying' means change, alteration or amendment; that the term modifying has to be construed widely as held by the Supreme Court in the case of Puranlal Lakhanpal vs President of India and Ors – AIR 1961 SC 1519; that the powers of this Authority to 'modify' the ruling appealed against and pass such orders 'as it thinks fit' is plenary in nature and such power is not restricted to issues that were decided or not decided by the AAR; that the order which fails to decide an issue which ought to have been decided by the AAR can be modified by rendering a finding on that issue. The Appellant also submitted that this Authority has the power to remand; that Section 101(1) of the CGST Act does not contain any legal impediment on remand of a case by this Authority and which is evident on reading the said provision in contradistinction with Section 107 (11) of the CGST Act. They submitted that even though this Authority is vested with the power of



remand, the same should not be resorted to in this case especially where all materials are available before this Authority; that it has been held that where the legality and correctness of the order impugned can be determined on the basis of materials already on record, remand should not be resorted to and the Court should finally decide the issue in exercise of its appellate or revisionary jurisdiction. In this regard, they relied on the following decisions:

- 1) Hiya Associates vs Nakshatra Properties Pvt Ltd – (2018) 18 SCC 358;
- 2) Ashwinkumar K Patel vs Upendra J Patel – (1999) 3 SCC 161
- 3) United Commercial Bank vs CIT – (1982) 137 ITR 434 (Cal); and
- 4) Bachahan Devi vs Nagar Nigam, Gorakhpur – (2008) 12 SCC 372

In view of the above, the Appellant submitted that the powers granted under Section 101(1) of the CGST Act are very wide and the Appellate Authority has the power to decide the question of place of supply which was merely incidental to the question of taxability of services and which the AAR has erred in not deciding in the present case.

DISCUSSIONS AND FINDINGS

9. We have gone through the entire case records and considered the submissions made by the Appellant in their grounds of appeal, the submissions made at the time of personal hearing as well as the additional written submissions. Briefly stated the facts are, the Appellant provides space on its web portal for a consideration for advertisements by a foreign entity. They had sought for a ruling whether the transaction with the foreign entity is taxable under GST and also what is the classification of the service as well as the rate of tax. The lower Authority held that the service of providing advertising space on the web portal for a consideration will be classifiable under SAC 998365 as “Sale of internet Advertising Space (except on commission)” and the rate of tax is 9% CGST and 9% SGST in terms of entry Sl.No 21 of Rate Notification No 11/2017 Central Tax (Rate) dated 28-06-2017. On the issue of whether the activity of providing advertising space on their web portal to a foreign entity is taxable under GST, the lower Authority failed to give a ruling citing the reason that the question involves determination of place of supply which is outside the jurisdiction of the Authority. The Appellant is before us in appeal on the limited aspect that the lower Authority’s decision not to give a ruling on the issue of taxability on the grounds of lack of jurisdiction is incorrect and bad in law.



10. In order to decide whether the lower Authority was correct in not giving a ruling on the question of taxability on the grounds that it involves determination of place of supply which is beyond the jurisdiction of the Authority, let us look into the provisions of law relating to the questions on which an advance ruling can be sought. Section 97(2) of the CGST Act states that the question on which the advance ruling is sought under the Act, shall be in respect of:

- (a) Classification of any goods or services or both;
- (b) Applicability of a notification issued under the provisions of this Act;
- (c) Determination of time and value of supply 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 applicant is required to be registered;
- (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, within the meaning of that term.”

A plain reading of the above shows that determination of place of supply is not a subject matter covered under Section 97(2) of the CGST Act. However, the Appellant has strongly relied on the Kerala High Court decision in the case of Sutherland Mortgage Services Inc vs Principal Commissioner reported in 2020 (35) G.S.T.L 40 wherein it was held by the High Court that even though the issue relating to determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 97(2) of the CGST Act, the issue relating to determination of place of supply, would come within the ambit of the larger issue of ‘determination of liability to pay tax on any goods or services or both’ as envisaged in clause (e) of Section 97(2) of the CGST Act. The relevant extract of the High Court’s order is reproduced below:

(h) A reading of clauses (a) to (g) of sub-section (2) of Section 97 of the CGST Act would make it clear that 7 items are enumerated as per clauses (a) to (g) of sub-section (2) of Section 97 and all those clauses other than clause (e) thereof, are in specific terms. Whereas clause (e) of sub-section (2) of Section 97 of the CGST Act clearly mandates that the larger issue of “determination of liability to pay tax on any goods or services or both” would also come within the ambit of the questions to be raised and decided



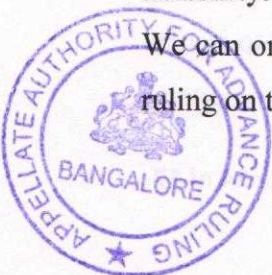
by the Advance Ruling Authority on which advance ruling could be sought and rendered under the said provisions. Whereas Clauses (a), (b), (c), (d), (f) & (g), i.e. the clauses other than clause (e), are in specific "pigeon holes" and the provision as per clause (e) of sub-section (2) of Section 97 is in wide terms and the Parliament has clearly mandated that the latter issue of determination of liability to pay tax on any goods or services or both, should also be matters on which the applicant concerned could seek advance ruling from the Advance Ruling Authority on which the said authority is obliged to render answers thereto. The Parliament has made the said provision envisaging that in transactions in nature, where India is now a growing economy and has to make its substantial performance in economic growth and development not only domestic investments, but even foreign investments would also be heavily required and that host of tax laws has been subsumed into the overarching umbrella of the goods and sales tax regime introduced by the Parliament and the Parliament would have certainly taken cognizance of the fact and has intended that very often applicants would require clarity and precision about various aspects of taxation in the transactions and that there should be certainty and precision in those matters, so that the applicant concerned is given the right to seek advance ruling even in such a larger issue as the one as per clause (e) of Section 97(2) of the CGST Act, which deals with issue of determination of liability to pay tax on any goods or services or both."

11. The above decision of the Kerala High Court has not been appealed against by the Department and has also been subsequently referred to and relied upon by several State Advance Ruling Authorities and Appellate Authorities, including this Authority. Therefore, while we agree that determination of place of supply per se is conspicuously absent in the list of issues enumerated under Section 97(2), in certain situations, the liability to pay tax or otherwise is dependent on the place of supply and in such cases, the determination of tax liability inevitably involves a determination of place of supply. Therefore, we are of the opinion that clause (e) of Section 97(2) covers within its scope the determination of place of supply if such determination is linked with the liability to pay tax and in such cases the Authority has the jurisdiction to pass a ruling on the issue of place of supply. We therefore



hold that the lower Authority was incorrect in not passing a ruling on the question of taxability of the transaction of selling advertising space on its web portal to a foreign entity.

12. Now the question arises whether we are within our powers to decide the question of taxability on merits and pass an original ruling on the same when the lower Authority has failed to pass any ruling on the said question. The Appellant has made detailed submissions before us on merits of the issue to substantiate their claim that the services provided by them qualifies in all respects as an “export of service”. They have also gone into great lengths to argue that the appellate powers are an extension of the original proceedings before the lower authorities and thus, has powers to decide questions which are germane to the dispute involved; that when the lower authority has erroneously failed to decide the issue relating to taxability of the services rendered by the Appellant to its foreign customers, the same can be decided by the Appellate Authority in exercise of its appellate powers. We have gone through the detailed submissions made by the Appellant in this regard and also gone through the case laws which they have relied upon to buttress their argument that we are well within our authority to pass an original ruling in this case. This Appellate Authority is a creature of the statute and draws its powers from the provisions of Sections 99 to 106 of the KGST/CGST Acts. In terms of Section 100(1) of the said Acts, *“The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.”* Further, where the members of the lower Authority differ on any questions on which an advance ruling is sought, then, in terms of Section 98(5) of the CGST Act, they shall state the points of difference and refer the matter to the Appellate Authority who will hear the case and decide the question on merits. Section 101(1) of the CGST Act states *“The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.”* It is therefore evident from the provisions of the statute that the Appellate Authority can pass an original ruling only when the matter is referred to them under Section 98(5). Where a ruling has been pronounced by the lower Authority an appeal by the aggrieved party lies before us and we, under the appeal proceedings, can pass such order as we think fit, either confirming or modifying the ruling. In the instant case, there is no ruling pronounced by the lower Authority on the question of taxability. In the absence of a ruling, there is nothing for this Authority to confirm or modify. We can only go so much as to say whether the lower Authority was correct in not giving a ruling on the question of taxability which we have already held as being incorrect.



13. The Appellant has argued that if the Appellate Authority has the power to either confirm or modify a decision, it also includes the power to decide a question which was otherwise admissible before the original authority. We do not agree with this interpretation. When we read the provisions of Section 98 of the CGST Act which prescribes the procedure to be followed by the lower Authority on receipt of an application, we find that any application for advance ruling can end in either of two ways i.e the lower Authority can either admit the application and pronounce a ruling or may reject the application for reasons that the questions asked are outside the scope of Section 97(2) or the questions raised in the application are already pending or decided in any proceedings in the case of the applicant under the provisions of the CGST Act. In both eventualities the lower Authority is required to pass a speaking order. When the application for advance ruling is admitted, the questions raised in the application are answered by an order issued in terms of Section 98(4). On the other hand, when the application is rejected, the order is passed in terms of Section 98(2). However, in terms of Section 100 of the CGST Act, an appeal can be filed before the Appellate Authority only against an order passed under Section 98(4). The provisions of Section 100 make it very clear that an appeal cannot be filed before this Authority when any application for advance ruling has been rejected by the lower Authority in terms of Section 98(2). In the instant case the application for advance ruling filed by the Appellant had 2 questions. The lower Authority has pronounced a ruling on the 2nd question in terms of Section 98(4) while the 1st question of the application was unanswered on the grounds that it was outside the scope of Section 97(2). To this extent, it can be construed that the 1st question of the application relating to the taxability of the transaction with the foreign entity was rejected by the lower Authority in terms of Section 98(2). Therefore, legally speaking, no appeal can be filed before us against the rejection of ruling on the question of taxability. However, having filed the appeal which has also been heard by us, we can only go so far as to say whether the lower Authority was correct in not passing a ruling on the question of taxability. Therefore, we disagree with the Appellant's contention that we have the authority to go beyond and decide the point on merits when there has been no ruling by the lower Authority.

14. The Appellant has also argued that the word 'modifying' as appearing in Section 101(1) has to be construed widely; that the power to modify the ruling appealed against and pass such orders as it thinks fit are plenary in nature and such power is not restricted to issues that were decided or not decided by the lower Authority. The Appellant has relied on certain



Supreme Court decisions which were rendered in the context of the appeal provisions of other taxation laws/statutes. The provisions relating to Advance Ruling as contained in Chapter XVII of the CGST/KGST Acts are not pari materia to the provisions relating to Appeals under any of the taxation laws like Income Tax, Customs, Central Excise/Service Tax or other statutes in the country. As already discussed, Chapter XVII of the CGST/KGST Acts are very clear and unambiguous on the procedures to be followed by the Advance Ruling Authority and the Appellate Authority. What can be appealed before us is laid down in Section 100 and what kind of action that we are empowered to take is also laid down in Section 101(1). A reading of these provisions makes it abundantly clear that the word 'modifying' used in Section 101(1) implies 'changing' or 'correcting' the decision of the lower Authority. It would be improper to assume that 'modifying' will also include answering a question which has not been answered by the lower Authority. If this were so, then there is no necessity of the law restricting the appeals to only orders passed under Section 98(4). The statute is unambiguously clear that an order passed under Section 98(2) rejecting an application cannot be appealed before us. The fact that only a ruling pronounced in an order issued under Section 98(4) is appealable before us justifies our stand that 'modifying' does not include answering the unanswered question. We therefore, do not agree with this argument put forth by the Appellant.

15. The Appellant has also made out a case that the powers of this Authority includes remand even if the said power has not been explicitly stated in Section 101(1) of the CGST Act. The Appellant has drawn a parallel with Section 254 of the Income Tax Act which states that the Appellate Tribunal after giving both the parties to the appeal, an opportunity of being heard, pass such order as it thinks fit; that the Supreme Court has interpreted this phrase to mean that the Appellate Tribunal has the power to pass an order or to remand the case. Section 101(1) of the CGST Act states "*The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.*" Here the phrase "pass such order as it thinks fit" is followed by a comma and not a full stop as in the case of Section 254 of the Income Tax Act. Therefore, while reading Section 101(1), the phrase "pass such orders as it thinks fit" has to be read in continuity with the rest of the sentence following the comma. Such a reading makes it clear that there is no provision for an order of remand for fresh decision and the obvious intention of the Legislature seems to be that the Appellate Authority should itself decide the question. Moreover, the provision that applications rejected



in terms of Section 98(2) are not appealable before the Appellate Authority substantiates the understanding that when any ruling pronounced by the lower Authority is appealed before us, we have to decide the issue and not remand it to the lower Authority. However, in this case the situation is peculiar. The question of taxability having been rejected by the lower Authority albeit incorrectly, without any ruling, the matter is not appealable as per the law. But considering the fact that the lower Authority's actions of not answering the question of taxability on the grounds of jurisdiction has been held as incorrect by us, we are constrained, in the interests of justice to send the matter back to the lower Authority to pronounce a ruling on the question of taxability after considering the place of supply provisions. In our opinion this would meet the ends of justice for the Appellant. We also observe that the direction for remand has also been resorted to by other AAARs in the following cases:

- a) D.M Net Technologies – Gujarat AAAR order dated 22-08-2022
- b) Portescap India Pvt Ltd – Maharashtra AAAR order dated 3-11-2020
- c) D K V Enterprises Pvt Ltd – Andhra Pradesh AAAR order dated 31-08-2020

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

ORDER

We set aside the order of the lower Authority and remand the case to the Advance Ruling Authority for a fresh consideration after taking into account the observations made by us in this order. The appeal filed by the appellant M/s Myntra Designs Pvt Ltd, Sy No 8 to 14 and 55, Alyssa Begonia Clover Embassy Tech Village, Outer Ring Road, Devarbisanahalli Varthur Hobli, Bengaluru Urban, 560103 is disposed off on the above terms.



(RANJANA JHA)

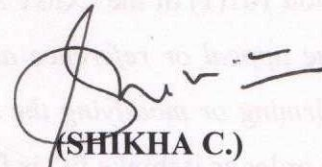
Member

Karnataka Appellate Authority
for Advance Ruling

Member

To, Appellate Authority for Advance Ruling

The Appellant



(SHIKHA C.)

Member

Karnataka Appellate Authority
for Advance Ruling

Member

Appellate Authority for Advance Ruling



Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Principal Commissioner of Central Tax, East Commissionerate, Bangalore
4. The Assistant Commissioner, LGSTO-016, Bangalore
5. Office folder

