



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No.04/AP/GST/2020 dated:24.02.2020

1	Name and address of the applicant	M/s DKV Enterprises Private Limited, Flat No.A3, 7-8-10/2, Crystal Dew Apartment, Opp: Harbour Park, Pandurangapuram, Visakhapatnam-530003, Andhra Pradesh.
2	GSTIN	37AACCD0179J1ZL
3	Date of filing of Form GST ARA-01	17.07.2019
4	Date of Personal Hearing	23.10.2019
5	Represented by	Sri S.Chakra Ramana, Authorized Representative
6	Jurisdictional Authority – State	Assistant Commissioner (ST), China Waltair Circle, Visakhapatnam Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under Sub-Section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s DKV Enterprises Private Limited, (hereinafter referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.



3. Brief Facts of the case:

M/s. DKV Enterprises Private Limited, Visakhapatnam (herein after applicant) is an authorized non-exclusive consultant for Grace Products (Singapore) Pte. Limited for the sale of Fluid Cracking Catalysts and Additives.

Grace Davison is a business unit of W.R. Grace (Singapore) Pte. Ltd., a Singapore corporation (hereafter "Grace"), with its principal place of business at 501 Orchard Road, #07-02 Wheelock place, Singapore 238880 and it engaged DKV Enterprises Pvt. Ltd., as its authorized non-exclusive consultant for sale of its products to the HPCL Visakha Refinery, the CPCL Chennai Refinery and the IOCL Barauni Refinery (hereinafter the "Territory") reserving unto itself and its affiliates the right to sell the products directly in the territory or through other consultants and distributors.

The applicant claims that only marketing consultancy service is being done by them in India on behalf of foreign company and their billing is directly done to foreign company in foreign currency and paid by inward remittance. More over it is argued that they are neither giving any service to Indian client nor having any agreement or payment to them. In light of the above the applicant approached the authority for advance ruling for the clarification whether his services can be clubbed under export of service.

The applicant had filed an application in form GST ARA-01, Dt:17.07.2019, by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below.

4. Questions raised before the Authority:

Whether the marketing and consultancy services supplied by the applicant are liable under export of service or not.

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), China Waltair Circle, Visakhapatnam Division. Accordingly, the application has been forwarded to the jurisdictional officers with a copy marked to the Central Tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, no remarks are received from the jurisdictional officer concerned regarding whether there are any proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Record of Personal Hearing:

Sri S.Chakra Ramana, the authorized representative of the applicant filed a request seeking adjournment of Personal Hearing on 18.09.2019 and finally appeared on 23.10.2019 and reiterated the written submissions.

6. Discussion and Findings:

We have examined the submissions made by the applicant in their application and the assertions made by the authorized representative as well at the time of Personal Hearing.



The applicant submitted that in the capacity of consultant, they will promote the sale of and solicit orders for the products throughout the Territory in accordance with the marketing plans and objectives of Grace. The Consultant shall have no power to bind Grace and shall negotiate for orders of the products to be transmitted to Grace for acceptance, only at the prices and in accordance with the terms, conditions, policies and instructions specified by Grace, any of which may be changed at any time by Grace.

In return, as full compensation for its services the consultant will earn the commissions on the sale of the products in the Territory pursuant to orders solicited by itself and accepted by Grace. Net sales price of the products shall mean Grace's FOB price in U.S. dollars for the products exclusive of freight, customs duties, taxes (including sales and value added taxes) packaging, insurance and any charges for technical service invoiced by Grace.

The consultant's commissions will be paid monthly, on the fifteenth day of the month following receipt by Grace of payment from its customers in respect of which the commissions were earned and are expressly conditioned upon such receipt by Grace. Grace may adjust commissions to reflect returns, allowances or credits in respect of sales of products during prior months, and may adjust the commission rates upward or downward where required by competitive conditions, but only when mutually agreed. Unless otherwise agreed in writing, all payments due to the consultant under the agreement will be made by bank transfer in U.S. dollars to the consultant account.

Exhibit C as submitted by the applicant provides the percentages of Commission Rates on Net Sales of the products as under

"1.75% of the Net sales price for existing business (225MT GST -5HV) at the Visakh Refinery and 3% of Net sales for new contracts. Net sales price of the products shall mean Grace's FOB price in U.S. dollars for the products exclusive of freight, customs duties, taxes (including sales and value added taxes) packaging, insurance and any charges for technical service".

After the examination of the nature of the marketing and consultancy services provided by the applicant consultancy between the applicant and its overseas client, now we take up the issue at hand i.e., whether the services provided by the applicant are export services or not.

Section 2 (6) of IGST Act 2017 defines export of services as under:

(6) "export of services" means the supply of any service when,— (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8;

Now we look into the basic issue whether the nature of the transaction made by the applicant fit into the definition of export of service. It is evident from prima facie understanding of the issue that supplier of service i.e., the applicant is located in India and the recipient of the service i.e., Grace Davison (Singapore) is located outside India. But the third parameter i.e., the place of supply of service being outside India is not applicable in the instant case basing on the facts as submitted by the applicant. The applicant renders its marketing and consultancy services to its overseas client and carries out all the functions in India as necessitated by its client. The mere fact that the payment has been received in convertible foreign exchange by the applicant will not qualify the transaction of the applicant as export of services.



In light of the above, this authority opines that it is appropriate and fair to clarify the applicant about the classification of their services. Basing on the nature of the activities of the applicant, they would rather qualify for services rendered by "intermediary" under the clause 13 of Section 20 of the IGST Act, 2017

(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

The applicant in the present case by providing marketing and consultancy services, facilitates the supply of goods i.e., fluid cracking catalysts and its additives from Grace Davison(Singapore) to its clients in the Territory i.e., India. Besides, the condition that transaction not being done on his own account makes the applicant rightly fit into the definition of intermediary in the instant case.

In order to identify the taxability of Goods and Services under GST, it is important to know the place of supply of said Goods or Services to make the said supply eligible to the kind of tax payable on transaction i.e., whether CGST and SGST or IGST. In case of Intermediary the provision of place of supply is mentioned under Section 13 (8) of IGST Act, 2017 as stated under:

" 8) The place of supply of the following services shall be the location of the supplier of services, namely:— (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) intermediary services; (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month".

This provision makes it clear that place of supply of Intermediary Services would be the location of the supplier of services i.e., in the instant case, it is nothing but the location of the applicant.

Coming to the determination of the tax, 'Intermediary Service' is covered under Section 7 (5)(c).

"(5) Supply of goods or services or both,— (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce".

In the instant case the intermediary services are provided to the recipient located outside India and the Interstate provisions as contained under Section 7 (5) (c) shall be applicable and hence IGST is payable under such transaction.

In view of the foregoing, we pass the following.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)



Question 1: Whether the services supplied by the applicant are liable under export or service or not

Answer 1: The services in question are not 'Export of Service' but 'Intermediary Services' for the reasons explained above and attract IGST.

**Sd/-D. RAMESH
(MEMBER)**

**Sd/- M.SREEKANTH
(MEMBER)**

//t.c.f.b.o//


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

1. M/s DKV Enterprises Private Limited, Flat No.A3, 7-8-10/2, Crystal Dew Apartment, Opp: Harbour Park, Pandurangapuram, Visakhapatnam-530003, **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, China Waltair Circle, Visakhapatnam Division. **(By Registered Post)**
2. The Superintendent, Central Tax, Siripuram Range, CGST Division, Visakhapatnam North. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

