



**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. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

AAR No. 02/AP/GST/2021 dated: 11.01.2021

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	28.10.2020
5	Represented by	Sri K.V.J.L.N. Sastry, Advocate
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. 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 APGST Act.

2. 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 CGST Act and APGST Act respectively) by M/s. DKV Enterprises Private Limited (hereinafter referred to as applicant).

3. Brief Facts of the case:

M/s. DKV Enterprises Private Limited, Visakhapatnam is an authorized non-exclusive consultant for Grace products (Singapore) Pte Limited for the sale of fluid cracking catalyst and additives.

Grace Division 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 (herein after the "Territory"), while 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. Moreover 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.

Brief History of the case:

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 issue, as mentioned below.



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

The AAR vide Ruling no. **AAR No.04/AP/GST/2020, dated: 24.02.2020** ruled that "The services in question are not 'Export of Service' but 'Intermediary Services' for the reasons explained in the order and attract IGST."

The applicant filed an application before the Appellate Authority for Advance Ruling in ARA-02 dated 05.05.2020, contending the Ruling passed by the Authority for Advance Ruling.

The case was taken up for hearing on 16th June 2020, for which the authorized representative Sri KVJLN Sastry, Advocate attended through web conference and reiterated the written submission. The appellant submits that the Advance Ruling authority has misinterpreted the nature of service and came to conclusion that the service provided by the applicant is not an export.

Moreover a request was made by the appellant to remand back the case to its original authority in light of the recent developments in the subject case, referring to a judgment in case of IBM India Pvt Ltd. V.s Commissioner of Central Excise & State Taxes., Bangalore-LTU, reported in 34 GSTL page 436. Consequent upon the request of the appellant, the Appellate Authority remanded the case back to its original Authority to examine afresh and dispose accordingly.

Personal Hearing:

The case was taken up for hearing on 28.10.2020, for which the authorized representative Sri KVJLN Sastry, Advocate attended and reiterated the submission already made.

Discussion and Findings:

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

The case law relied by the applicant relates to the pre-GST Period in relation to Export of Service under the Service Tax and is not applicable to the Intermediary service under the IGST Act, 2017.



The applicant relied on the judgment of the CESTAT, South Zonal Branch, Bangalore in the case of **IBM India Pvt Ltd. versus Commissioner of Central Excise and Service Tax reported in 2020(34) G.S.T.L. 436** wherein the appellant is a subsidiary company for parent company engaged in identification of customers and sales promotion in India and it was held to be 'Export of Service' under Rule 3(1) (iii) of Export of Service Rules, 2005. Accordingly, it was contended that the same was applicable under GST also.

The service provided by the applicant is intermediary service as per section 2(13) of the IGST Act, 2017.

The applicant is covered and fits into the definition of "intermediary" as defined under the IGST Act and, therefore, provisions pertaining to 'place of supply' in case of intermediary services as provided in sub-section 8 of section 13 are relevant.

Accordingly, Commission received by the applicant in convertible Foreign Exchange for rendering services as an 'Intermediary' between an exporter abroad receiving such services and an Indian importer of an equipment is not an export of service. Said supply will be treated as inter-state supply and IGST will be levied @18%.

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)


The earlier ruling of this Authority, in AAR No.04/AP/GST/2020, dated: 24.02.2020 is upheld.

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

**Sd/-A. Syam Sundar
(MEMBER)**

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




Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., 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.

