



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO. /HAR/HAAR/R/2019-20/24
(In Application No.: 24/2019-20, dated 16.10.2019)

Name & Address of the Applicant	:	WILHELM FRICKE SE, 7002A, Palm Springs Plaza, Golf Course Road, Sec 54, Gurugram, Haryana, 122003
GSTIN of Applicant	:	06AAACW9055E1ZB
Date of Application	:	16.10.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	(v) determination of the liability to pay tax on goods or services or both (vi) whether the applicant is required to be registered under the Act (vii) Whether any particular thing done by the applicant with respect to any good and/or services or both, within the meaning of that term
Date of Personal hearing	:	12.06.2020
Present for the applicant	:	Sh. Nishant Virmani (Country Manager)

Memo No. 1064
Date: 28.08.2020

1. Brief Facts of the Case:

1.1 Wilhelm Fricke SE (hereinafter referred to as 'WFSE India' or 'LO' or 'applicant') having presence in India as a liaison office of Wilhelm Fricke SE, based in Germany (hereinafter referred to as 'WFSE' or 'WFSE HO'). WFSE is incorporated in Germany and is, *inter alia*, engaged in development; assembly/production and sale of agricultural machinery and agricultural machinery spare parts.

1.2 WFSE India is established as a Liaison office in India, currently operating from its Gurugram Office located at 7002A, Palm Springs Plaza, Golf Course Road, Sec 54, Gurugram, Haryana, 122003, with the permission of RBI, vide letter no. FE.CO.FID/10.97.319/2009-10 dated 25th August 2009 to undertake following activities:-

- (a) Representing in India the parent company/group companies
- (b) Promoting export import from/to India
- (c) Promoting technical/financial collaborations between parent/group companies and companies in India
- (d) Acting as communication channel between the parent company and Indian companies

1.3 Activities carried out by LO in India are as follows:-



- (a) Identification of vendors in India;
 - (b) Liaising and co-ordination with vendors; Receipt of Order enquiries from WFSE HO and co-ordination with the supplier in India for their price quote;
 - (c) Collection of price quotes from various suppliers, and informed to WFSE HO;
 - (d) In certain cases, prima facia checking of samples developed by Indian Vendors and dispatching the same to WFSE HO through courier;
 - (e) Communication of confirmation of the order to the supplier delivery terms;
 - (f) Preliminary quality check of product before shipment of goods; and
 - (g) Carrying out any other ancillary activity required to procure agricultural machinery spare parts from India.
- 1.4 All the administrative expenses, including salary expenses of Indian LO are met by HO office. (i.e. as per RBI instruction in their approval; the entire expenses of the office in India is met exclusively out of the funds received from abroad through normal banking channels). No separate consideration/fee is charged from HO through any tax invoice/debit note.
- 1.5 Thus, the LO is acting as communication channel between the parent company/HO located outside India and Indian companies. Except the proposed liaison work, the office in India, have not undertaken any activity of trading, commercial or industrial nature nor they enter into any business contract in their own name without prior permission. No commission/fees has been charged or any other remuneration received/income earned by the office in India for the liaison activities/services rendered by it or otherwise in India.

2 .Question(s) on which advance ruling is required

- 2.1. Whether the reimbursement of expenses and salary paid by Wilhelm Fricke SE, Germany to the liaison office established in India is considered as supply of services as per Section (7) of the CGST Act, 2017 or under Schedule I of CGST Act, 2017, especially when no consideration is charged/ paid.
- 2.2 Whether the applicant i.e. the Liaison Office is required to get registered under GST?
- 2.3 Whether the applicant i.e. LO is required to pay CGST/SGST/IGST, as the case may be, on reimbursement received from HO?

3. DISCUSSIONS

3.1 The applicant submitted that the activities undertaken by LO/applicant are strictly in line with the terms and conditions specified by RBI permission/approval letter.

3.2 It is submitted that In order to be a supply liable to GST, an activity has to fall under Section 7 of the Central Goods and Services Tax Act, 2017 which reads as under:-

7. (1) *For the purposes of this Act, the expression "supply" includes—*

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- (b) import of services for a consideration whether or not in the course or furtherance of business and;*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration*

3.3 That the applicant/liaison office is working as per the terms and conditions stipulated by RBI and the reimbursement of expenses & salary of employees is paid by WFSE to the liaison office. No consideration for any activity is being charged by the LO and the LO does not have any business activities of its own as specified by RBI conditions. Thus, there is no consideration charged by applicant from the HO in foreign country for any services. There is no amount received from HO except the funds for payment of salary, reimbursement of expenses like rent, security, electricity, travelling, etc., therefore the same is not a supply of service under GST law in absence of charging of consideration.

3.4 Further, Schedule I of CGST Act, 2017 specifies that supply of services between related parties or distinct persons as per Section 25, even without consideration, constitute a supply, when made in the course or furtherance of business. Related Person and Distinct Person has been defined under CGST Act, 2017 as follows:-

Related person is defined through Explanation to Section 15 of CGST, which is as follows:



Spec

- (a) Persons shall be deemed to be "related persons" if—
- (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;

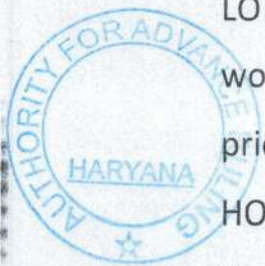
Distinct person as specified under sub-section (4) & (5) of the Section 25,

4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

3.5 Referring to the above mentioned definitions, as the activities undertaken by LO is without any consideration, thus not a supply, therefore 2nd entry of Schedule-I could be relevant to be analysed. However, as the LO has been established for the ease of communication between Indian vendors and HO and the LO is just an extension to its German office in its procurement activities from suppliers in India as mentioned in the RBI permission letter, Therefore, they are not distinct entity, as it is not a separate legal entity which is established.

3.6 There is no separate legal entity that has been established and WFSE India i.e. LO has not taken any activity of trading, commercial or industrial nature nor would they enter into any business contracts in its own name without RBI's prior permission. LO is not receiving any fees for the services provided to the HO as the same are being provided by the employees of the same entity. The Head office, reimburses the expenses incurred by WFSE India in the nature of



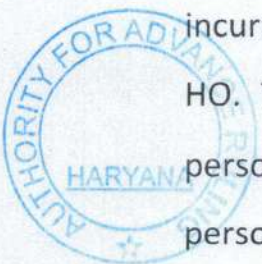
salary, rent, security, travelling etc. Further the liaison office is strictly prohibited to undertake any activity of trading, commercial or industrial nature or entering into any business contracts in its own name. The applicants are merely an executing arm of the head office and do not have resources to carry on the business activity. From this it can be safely concluded that the LO does not have independent existence of its own. HO and the LO are the same entity and the LO do not have any entity of their own, thus there cannot be a flow of services inter-se the liaison office and head office as it amounts to service to one self.

3.7 Hence, based on the foregoing submissions, WFSE India/Applicant is of the view that activities undertaken by us would not be a supply under CGST /SGST Act and thus is not required to obtain registration under Section 22 of CGST /SGST Act or pay CGST, SGST or IGST as the case may be.

4. FINDINGS OF THE AUTHORITY

4.1 The applicant is working as the Indian Office of M/s. Wilhelm Fricke SE which is established as a Liaison Office with the prior permission of RBI. Except proposed liaison work, this office in India would not undertake any activity of trading, commercial or industrial nature nor would they enter into any business contracts in its own name without RBIs prior permission. There is no commission/ fees being charged or any other remuneration being received/ income being earned by the office in India for the liaison activities/ services rendered by it.

4.2 The HO in Germany reimburses the expenses incurred by the applicant for their operations in India which are in the nature of salary, rent, security, electricity, travelling etc. The applicant does not have any other source of income and it is solely dependent on the HO for all the expenses incurred by the applicant, which are subsequently reimbursed by the HO. Therefore the HO and Liaison Office cannot be treated as separate persons. Since, HO and Liaison Office cannot be treated as separate persons, there cannot be any flow of services between them as one cannot provide service to self and therefore, the reimbursement of



Speck

expenses made by the HO cannot be treated as a consideration towards any service.

4.3 The amount received from HO are the funds for payment of salary, reimbursement of expenses like rent, security, electricity, travelling, etc. No consideration is being charged by the applicant from the HO for such services.

4.4 Further the liaison office is strictly prohibited to undertake any activity of trading, commercial or industrial nature or entering into any business contracts in its own name. Also the reimbursement claimed by them from their HO is also falling out of the purview of supply of service. As there are no taxable supplies made by the Liaison office, they are not required to get registered.

5. Advance Ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussions and findings, the advance ruling on the question is pronounced as under:-

- (1) When the applicant/liaison office is working as per the terms and conditions as mentioned above, the reimbursement of expenses and salary paid by M/s Wilhelm Fricke SE to the liaison office, does not fall under service, as no consideration for any services is being charged by the liaison office. Further, the kind of reimbursement claimed by them from their HO is also falling out of the purview of supply of service and as there are no such taxable supplies made by the Liaison office.
- (2) The applicant is not required to get them registered under GST Act.
- (3) The applicant is not liable to pay GST on reimbursements received from HO.

Ordered accordingly.

To be communicated.



(Sangeeta Karmakar)
Member CGST



(Madhubala)
Member SGST

Regd. AD/Speed Post

WILHELM FRICKE SE,
7002A, Palm Springs Plaza, Golf Course Road,
Sec 54, Gurugram, Haryana, 122003



Copy to:

1. ✓ The Commissioner, Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner, Gurgaon (ST).
3. Assistant Commissioner, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.