**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

**GST Bhavan, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.**

**(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

**BEFORE THE BENCH OF**

**(1) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)**

**(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)**

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| GSTIN Number, if any/ User-id | | **27AABFF0283F1ZR** |
| Legal Name of Applicant | | **M/s. FUTUREDENT** |
| Registered Address/Address provided while obtaining user id | | 7/103,1st Floor, Sapphire Court, Azad Nagar, J.P. Road, Andheri (West) Mumbai -400053. |
| Details of application | | GST-ARA, Application No. 59 Dated 04.11.2019 |
| Concerned officer | | MUM-VAT-C-719, NODAL DIV-007, MUMBAI |
| Nature of activity(s) (proposed/present) in respect of which advance ruling sought | | |
| A | Category | **Service Recipient** |
| B | Description (in brief) | Futuredent *"an Indian Partnership Firm"* (earlier known as "Famdent") entered into a contract of intermediary (brokerage) services with Fair Relations GmbH "*a German entity*" for identifying a buyer for one of its business segment related to trade fairs, events, exhibitions, and awards (business) including the tradename "Famdent" on slump sale basis.<br>Fair Relations GmbH (Germany) introduced M*/s M*esse Dusseldorf Germany who further directed M/s Messe Dusseldorf India Private Limited (buyer) to M/s Famdent (now Futuredent) (seller). |
| Issue/s on which advance ruling required | | (ii) Applicability of a notification issued under the provisions of this Act |

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| | (iv) Admissibility of input tax credit of tax paid or deemed to have been paid<br>(v) Determination of the liability to pay tax on any goods or services or both<br>(vii) 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. |
| Question(s) on which advance ruling is required | As reproduced in para 01 of the Proceedings below. |

## PROCEEDINGS

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

The present application has been filed under Section 97 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" respectively ] by **M/s. FUTUREDENT,** the applicant, seeking an advance ruling in respect of the following questions.

1. ***Whether Futuredent is required to pay IGST under reverse charge mechanism on intermediary services received from Fair Relations GmbH (Germany)?***
2. ***If answer to above question is yes (i.e. GST payable), Since Futuredent has other business verticals as well in the same entity, whether Futuredent will get ITC on such RCM paid?***

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

## 2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

2.1 "Fair Relations GmbH" (FR) is an international consulting and service company for the exhibition industry, market research, mergers and acquisitions, organizing and marketing of trade shows and various other services. It is the provider of intermediary service, located in Germany and does not have PAN in India.

2.2 Mr. Anil Arora partner in "Futuredent" (applicant), met the management of FR in Germany during a trade show and FR proposed to provide applicant with intermediary service to identify a potential buyer for "Famdent" exhibition, trade and awards business.

2.3 FR introduced M/s Messe Dusseldorf Germany (MDG), who further introduced their India subsidiary "M/s Messe Dusseldorf India Private Limited" (MDIPL) to applicant company.

2.4 MDG is involved in organizing Trade Fairs and Exhibitions globally. Its wholly owned subsidiary, MDIPL is an Indian company involved in trade fair organizing and is a provider of trade fair related services for exhibitors and visitors in India,

2.5 MDIPL purchased exhibition, trade and Award business and brand name "Famdent" and "Famdent Awards" from the applicant i.e Futuredent (earlier known as Famdent) on Slump sale Basis. Futuredent continues to do other businesses in the same entity.

2.6 The subject application has been filed to assess whether the transaction between FR and the applicant, i.e. Futuredent (earlier known as "Famdent") is liable to GST in India under reverse charge mechanism and, if the transaction is concluded as a taxable supply, whether applicant would be able to claim and utilize the input tax credit on such GST paid.

2.7. As per the scope of "supply" as mentioned in Section 7 of the CGST Act, 2017, the transaction between the applicant and FR shall be treated as supply of services.

2.8 As per the Notification No 10/2017 I.T. (Rate), dated 28.06.2017, in the case of supply of service by any person who is located in a non-taxable territory to any person other than non-taxable online recipient, the liability to pay GST shall be on the recipient of such service and such liability is to be discharged on Reverse Charge Basis.

2.9 As laid down in Section 13(8) (b) of the IGST Act, 2017, *the place of supply of Intermediary Services shall be the location of the supplier of services.*

2.9.1 A perusal of the agreement between the applicant and FR reveals that services rendered by FR should fall under the category of "intermediary services", since the transaction satisfies

the definition of intermediary contained in Section 2(13) of the IGST Act, 2017, which has been reproduced by the applicant. As per the agreement, FR shall arrange, facilitate and support direct contact and negotiations between Famdent i.e. the applicant and the potential buyer.

2.9.2 In the subject case, the supplier of intermediary services, in this case, FR, is located outside India and the applicant, the receiver of such services, is located in India but the place of supply of the impugned services is outside India as per Section 13(8) (b) of the IGST Act, 2017. Therefore the impugned services cannot be considered as Import of services under the GST Laws. Thus, payment to be made by the applicant to FR would not fall within the purview of imports to attract payment of GST on a reverse charge basis by the applicant.

2.10 The second question raised by the applicant is, if at all they are required to pay GST under reverse charge basis, then whether applicant will get ITC on such RCM paid.

2.10.1 Applicant has cited the provisions of Section 16(1) and 2(17) of CGST Act, 2017 and stated that they are eligible to claim the input tax credit paid on reverse charge basis, even though, after the slump sale of exhibition business of Futuredent, there are other business verticals remaining in the entity which can utilize the ITC.

**03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:**

The submissions made by the jurisdictional officer is as under:-

3.1 As per the contract dated 23.05.2016 submitted, the applicant is interested in selling its trade shows or shares thereof to an investor and has asked FR, to act as a broker for prospective buyer, of its trade shows. FR would arrange, facilitate and support direct contract and negotiations between the applicant and interested parties against which the applicant would pay a fee of 5.0% of the economic value of the business to FR. The fee is in the nature of a 'success fee' and becomes due only in case the applicant enters into binding contract with a party identified and presented by the broker and is calculated as per the economic value of the contractual relationship between the applicant and its contracting party.

3.2 As per Notification no.10/2017 IT(R) dt. 28.06.2017, one of the notified service for which RCM is applicable is "any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient". Import of services by a taxable person in India is liable to GST under reverse charge mechanism.

3.3 The nature of goods or services supplied by an intermediary must be same as goods or services supplied by the principal. If the nature of supply of goods or services by a person is different from the supply of principal, it cannot be said that the person is merely arranging or facilitating supply of goods or services. An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal. Further, a person can arrange or facilitates supply of goods or services belonging to some other person only when he has been authorised by the principal. In view of this, the test of agency must be satisfied between the principal and the agent i.e. the intermediary.

3.4 In the instant case, FR is only acting as an agent, and the other operative parts of arrangement or facilitation has not been executed by FR. In the subject case, the intermediary shall be liable to pay tax for such services.

3.5 In respect of the second question i.e. if IGST is payable under reverse charge mechanism, since the applicant has other businesses verticals as well in the entity, whether applicant will be able to avail ITC on GST paid under reverse charge mechanism.

3.5.1 As per agreement between applicant (seller) and MDIPL (buyer) supply is done on the basis of "Slump Sale" and Slump sale is an exempted supply. The term "Goods" has been defined under Section 2(52) to mean any movable property other than money and securities. GST is not applicable on Slump Sales considering "business as a going concern" to be outside the scope of "goods". In this case, since Slump sale is exempt supply under GST act, tax paid (GST) on services performed in order to execute exempt supply is not eligible for Input Tax Credit (ITC).

## 04. HEARING

**4.1** Preliminary hearing in the matter was held on 02.01.2020. Shri Haseet Bathiya, Advocate, appeared along with Shri Akshay Sharma, C.A. and requested for admission of the application. Jurisdictional Officer Ms. Smita Ajbe State Tax Officer (C-719), Nodal -07, Mumbai also appeared. The applicant was asked to submit additional documents and therefore the case was adjourned.

4.2 The case was fixed and called for hearing on 28.01.2020. Shri Haseet Bathiya, Advocate, appeared along with Shri Akshay Sharma, C.A. and Authorized Representative, made oral and written submissions. Jurisdictional Officer Shri Sachin Sangale, Assistant

Commissioner of S.T. Nodal -07, Mumbai appeared along with Ms. Smita Ajbe State Tax Officer (C-719), Nodal -07, Mumbai.

4.3 Final hearing was held on 03.03.2020 during which Shri Haseet Bathiya, Advocate appeared along with Shri. Akshay Sharma C.A. & Authorized Representative, made oral and written submissions. Jurisdictional Officer Sh. Sachin Sangale, Assistant Commissioner of S.T. Nodal -07, Mumbai also appeared and made submissions. We heard both the sides.

## 05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and written submissions of the applicant and oral contention of the jurisdictional officer. The issue before us pertains to applicability of a notification.

5.2 In the subject case, we find that, the applicant is a procurer of intermediary services from Fair Relations GmbH and the subject questions have been raised by the applicant as a recipient of services.

5.3 This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections are 95 to 98, 102, 103, 104 and 105. As per Section 95, the term '***advance ruling' means a decision provided by this authority to an applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.***

5.3 Thus the applicant can raise questions on matters or questions specified in Section 97(2) of the CGST Act only if the supply of goods or services or both are being undertaken or proposed to be undertaken by the applicant. Hence it is clear that, even if the questions raised by an applicant are on matters or questions specified in Section 97(2) of the CGST Act but if the supply of goods or services or both are not being undertaken or not proposed to be undertaken by the said applicant then the same is not covered under the Advance Ruling provisions.

5.3 Therefore, before we decide the question raised by the applicant in this application, it is essential that we first determine whether or not the activities undertaken by the applicant pertains to the supply of goods or services or both, being undertaken or proposed to be undertaken by the applicant.

5.4 We find that the applicant has not undertaken the supply in the subject case, and is also not proposing to undertake the supply. We find that, the applicant is a recipient of services from a person situated abroad. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence without discussing the merits of the case, we reject the subject application as not being maintainable.

**06.** In view of the extensive deliberations as held hereinabove, we pass an order as follows:

## ORDER

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

**NO.GST-ARA- 59/2019-20/B-** 28 **Mumbai, dt.** 11/03/2020

For reasons as discussed in the body of the order, the questions are answered thus –

**Question 1.** Whether Futuredent is required to pay IGST under reverse charge mechanism on intermediary services received from Fair Relations GmbH (Germany)?

Answer:- Not answered in view of discussions made above.

**Question 2.** If answer to above question is yes (i.e. GST payable), Since Futuredent has other business verticals as well in the same entity, whether Futuredent will get ITC on such RCM paid?

Answer:- Not answered in view of answer to question number 1 above.

ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

**PLACE - Mumbai**

**DATE -** 11/03/2020

sd/-
**A.A.CHAHURE**
**(MEMBER)**

sd/-
**P.VINITHA SEKHAR**
**(MEMBER)**

CERTIFIED TRUE COPY

A.A.Chahure

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.