

Reimbursement of expenses by foreign head office to Indian liaison office cannot be treated as supply

The Hon'ble AAR, Haryana, in the matter of *M/S. Wilhelm Fricke SE [Advance Ruling No. HAR/HAAR/R/2019-20/24, decided on June 25, 2020]* held that, the Germany based head office and Indian Liaison Office ("LO") cannot be treated as separate persons as no consideration for any services is being charged by the LO. Hence, there cannot be any flow of services between them as one cannot provide service to self and therefore, the reimbursement of expenses made by the head office cannot be treated as a consideration towards any service.

Facts:-

Wilhelm Fricke SE ("**WFSE India**" or "**Applicant**") is established in India as a LO of Wilhelm Fricke SE, based in Germany ("**WFSE Germany**" or "**HO**") engaged in development, assembly/production and sale of agricultural machinery and agricultural machinery spare parts.

Activities carried out by LO in India:

- (a) Identification of vendors in India;
- (b) Liaising and co-ordination with vendors; Receipt of Order enquiries from HO and co-ordination with the supplier in India for their price quote;
- (c) Collection of price quotes from various suppliers, and informed to HO;
- (d) In certain cases, prima facia checking of samples developed by Indian Vendors and dispatching the same to 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.

Except proposed liaison work, the Applicant does 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. Further, 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. The HO reimburses the expenses incurred by the Applicant for their operations in India which are in the nature of salary, rent, security, electricity, travelling etc. and no separate consideration/fee is charged from HO through any tax invoice/debit note.

Thus, the Applicant acts as communication channel between the foreign HO and Indian vendors/ suppliers in India.

Issues:-

- Whether the reimbursement of expenses and salary paid by WFSE Germany to the Applicant is considered as supply of services as per Section 7 of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) or under Schedule I of CGST Act, especially when no consideration is charged/ paid.
- Whether the Applicant is required to get registered under GST?
- Whether the Applicant is required to pay GST on reimbursement received from HO?

Held:

The Hon’ble AAR, Haryana, in **Advance Ruling No. HAR/HAAR/R/2019-20/24, decided on June 25, 2020** held as under:

- Analyzed Section 7 of the CGST Act and observed that, 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 reimbursements for payment of salary, 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.
- Further, analyzed Schedule I of the CGST Act and observed that 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. Moreover, 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, they are not distinct entity, as it is not a separate legal entity which is established.
- Held that, since HO and LO 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 expenses made by the HO cannot be treated as a consideration towards any service. As there are no taxable supplies made by the LO, they are not required to get registered under GST or to pay GST on reimbursements received from HO.

Comments:

A similar view has been taken by the Hon’ble AAR, Rajasthan in the matter of **Habufa Meubelen B.V. [Advance Ruling No. RAJ/AAR/2018-19/05, decided on June 16, 2018]** wherein it was held that mere reimbursement of salary and other expenses by foreign head office to LO (applicant) established in India is not liable to GST. It was concluded that head office and LO cannot be

treated as separate persons, and since there cannot be any flow of services between them inasmuch as one cannot provide service to self, reimbursement of expenses cannot be treated as a consideration towards any service.

Further, Hon'ble AAR, Tamil Nadu, in the matter of ***M/S. Takko Holding GMBH [Order No. 14/AAR/2018, decided on September 27, 2018]*** also held that reimbursement of the expenses and salary paid to the LO is not liable to GST and there is no requirement of getting registered under GST for the liaison activities.

Relevant Provisions:

Section 7(1) of the CGST Act:

“(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”

Schedule I Entry 2 of the CGST Act:

“Activities to be treated as supply even if made without consideration

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.”

Explanation to Section 15 of the CGST Act:

“(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;”

Section 25(4) & (5) of the CGST Act:

“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.”

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