

Whether GST leviable on services provided by Liaison Office as an 'intermediary'

The Hon'ble AAR, Maharashtra in the matter of ***Dubai Chamber of Commerce and Industry ("DCCI") [GST-ARA-35-2019-20B dated May 24, 2021]***, has held that a liaison office of the DCCI to be an 'intermediary' which is providing services. Further held that, the liaison office cannot be considered as non-profit making organization, and the activities undertaken are covered under the scope of "Commerce", "Business" and "Supply". Hence, liable to pay GST and take registration under the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**).

Facts:

Dubai Chamber of Commerce and Industry, Maharashtra (**"the Applicant"**) is the Liaison Office of Dubai Chamber of Commerce and Industry, UAE (**"DCCI UAE"/"Head Office"**) that provides services of connecting business partners in Dubai with businesses in India for a consideration from the Head Office. The Applicant is a non-profit organization, formed to represent, support and protect the interests of the Dubai business community in India, by creating favorable environment, promoting Dubai businesses and by supporting development of business in India. Under the ambit of Reserve bank of India (**"RBI"**) norms, the Applicant shall undertake below liaison/representation activities in India:

1. Liaison between India office and Dubai office.
2. Attending and representing DCCI in various seminars, conferences and trade fairs.
3. Connecting businesses in India with business partners in UAE and vice-versa.
4. Organizing events and interactions with Indian stakeholders for sharing information about Dubai.

Apart from above, no other activity is to be performed by the Applicant in India whether with or without any consideration.

Issues:

1. Whether activities performed by the Applicant will be treated as supply under the GST Act?
2. Whether the Applicant is liable to pay GST?

Held:

The Hon'ble AAR, Maharashtra in ***GST-ARA-35-2019-20B dated May 24, 2021***, held as under:

- The Applicant connects business in India with businesses in Dubai, which is supply of services, and stated that the Applicant acts as a conduit between some business partners in Dubai and certain businesses in India. Therefore, the Applicant acts as an 'Intermediary' as defined under Section 2(13) of Integrated Goods and Service Tax Act, 2017 ("**the IGST Act**"), as, the Applicant satisfies all the conditions of an intermediary.
- Analyzed Section 13(8) of the IGST Act, and held that the place of supply for an intermediary would be the location of the supplier of services i.e. the location of the Applicant which is located in the State of Maharashtra, India.
- Noted that, from the website, it can be seen that DCCI, UAE, is providing various services for which fees are charged. Thus it is clear that the Applicant's Head Office appears to be a profit making organization, and the activities under taken are covered under the scope of "Commerce", "Business" and "Supply".
- Held that, the Applicant cannot be considered as non-profit making organization, effecting supply of services for a consideration for which it has to obtain GST Registration and pay applicable GST on its transactions.

Our Comment:

- AAAR, Karnataka in the matter of ***Fraunhofer-Gesellschaft Zur Forderung [Advance Ruling No. KAR ADRG 50/2020, dated October 8, 2020]*** took a contrary stand that activities of liaison office located in Bengaluru carrying out activities permitted by RBI, does not amount to "supply of service" and set aside the AAR ruling which held that liaison activities being undertaken by appellant amounts to supply under Section 7 of CGST Act and liaison office is required to pay GST and undertake registration.
- Similarly, the Hon'ble AAR, Tamil Nadu in the matter of ***Takko Holding GmbH [Order No. 14-AAR-2018, dated September 27, 2018]*** has held that liaison activities undertaken while acting as communication channel between parent company and Indian supplier of goods, strictly in line with condition specified by RBI permission letter does not constitute 'supply' under GST law. Hence, not liable to pay GST.

Above order was in line with order of the Hon'ble AAR, Rajasthan in the matter of ***Habufa Meubelen B.V. [Advance Ruling No. RAJ/AAR/2018-19/05, dated June 16, 2018]***.

In our view, relying on the decision of various precedents, it can be construed that the liaison office is mere extension of the foreign Head office and no separate identity can be established neither can be termed as an intermediary. Further, activities undertaken by the liaison office shall not be covered under the definition of supply. Hence, there is no taxable supply and therefore shall not be liable to GST.

Relevant provisions:

Section 2(13) of the IGST Act:

“(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.”

Section 7 of the CGST Act:

“Scope of supply-

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;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(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

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II”

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