

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

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

**BEFORE THE BENCH OF**

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax ( Member)  
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax( Member)

GSTIN Number, if any/ User-id	27AABCJ6665J1Z6	
Legal Name of Applicant	MRS. VISHAKHAR PRASHANT BHAVE MICRO INSTRUMENTS	
Registered Address/Address provided while obtaining user id	15, SHRI KRIPA RAMAKRISHNA SOCIETY, RAM MANDIR ROAD, KHERWADI BANDRA EAST, MUMBAI 400051	
Details of application	GST-ARA, Application No. 23 Dated 15.05.2018	
Concerned officer	Asstt. Commissioner of Sales Tax( C-906) Nodal Division- 5, Mumbai.	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Sole proprietary Concern M/s. Micro Instruments, the party is dealing in Microscopes, its spare parts and other related activities such as installation, servicing, repairs and maintenance of microscopes.
Issue/s on which advance ruling required	(v) determination of the liability to pay tax on any goods or services or both	
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"] by Mrs. Vishakar Prashant Bhave, the applicant, seeking an advance ruling in respect of the following issue.

(i) Whether the "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 an "export of service" falling under section 2(6) & outside the purview of section 13 (8) (b), attracting zero-rated tax under section 16 (1) (a) of the Integrated Goods and Services Tax Act, 2017?

(ii) If the answer to the Q. (i) is in the negative, whether the impugned supply of service forming an integral part of the cross-border sale/purchase of goods, will be treated as an "intra-state supply" under section 8 (1) of the IGST Act read with section 2 (65) of the MGST Act attracting CGST/MGST? And, if so, at what rate?

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 such 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, a reference to such a similar provision under the CGST Act/MGST Act would be mentioned as being under the "GST Act".

**02 FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

**STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS**

1. The facts relevant for the purposes of this application, briefly stated, are as under:

The Applicant, M/s. Micro Instruments, Mumbai, (for brevity: "Micro") is a sole Proprietary Concern, duly Registered under the CGST/SGST and IGST Acts ( Reg. no. 27AHSPB0847K1Z2), having its registered Office at 15, Shri Kripa, Ramakrishna Society, Ram Mandir Road, Kherwadi, Bandra (E), and is carrying on trading business in Laboratory Instruments, its spare parts, Laboratory Equipment, and other related activities such as servicing, repairs and maintenance of Laboratory Equipment/Instrument.

2. One of the activities of Micro relates to providing services to its Principals at Germany, by way of procuring Purchase Orders (P. O.) from the parties desirous of purchasing advanced type of Laboratory Equipment, by negotiating the terms of supply including fixation of price above the floor price fixed by the Principals (known to the Applicant alone). If Micro can negotiate better price than the floor price, the difference between the floor price and actual price is given to Micro by way of "Commission" in "convertible foreign exchange".

2. The modus operandi of the negotiated transactions can be briefly summarized as under:

(a) The prospective customer in India places the P.O. directly on the Principals at Germany, and arranges for Letter of Credit for remittance of price in foreign currency,

(b) The principals directly supply the Laboratory Equipment to the party in India say M/S Panama Laboratory, Mumbai a fictitious name) which pays price and gets the delivery from the Customs on payment of custom duty and IGST as applicable.

(c) In the majority of cases, barring exceptions, the P. O. states the name of Micro, and also mentions that the Indian Purchaser will be entitled to have some "discount in kind", like getting some items Free of cost such as a TV set, a Computer or a Camera etc.; which is to be provided by Micro as a necessary charge on the "commission" it receives in convertible Foreign Exchange.

(d) Accordingly, Micro arranges, at its own cost such articles to be given free, in the nature of "discount in kind", and hands over to the same to the Purchasing Party in India in fulfillment of the accepted terms of sale / purchase Agreement between the Principals at Germany and the Indian Purchasing Party.

(e) The P.O. also states that during the Guarantee period, say, one year the seller/supplier at Germany will give "free service", if required (but that would not include any replacement of parts etc.). Micro, however, has no contractual obligation to give such "free Service".

(f) Once the P.O. is completed, the Principals at Germany issue a "Credit Note", for the "Commission", which is remitted in freely convertible Foreign Exchange, normally in Euro Currency: (sign: €; code:EUR) the official currency of the European Union).

(g) Micro was not issuing any Debit Note or Invoices or any other document, but Accounting was done only on the basis of the Credit Note/s.

3. Now, in the circumstances, the following questions arise for consideration & decision by this Honourable Advance Ruling Authority, Maharashtra State, Mumbai:

(i) Whether the "Commission" received by Micro in convertible Foreign Exchange as an "Intermediary" in International/ cross boarder transaction, for acting as a Broker or facilitator, in procuring from an Indian Customer/s purchase order/s (P.O.) for importing Laboratory Equipment from Germany, is liable to GST either under CGST/SGST Act, 2017 or the IGST Act,2017? And if so, the rate of CGST,SGST and IGST respectively.

(ii) If liable to GST, whether the entire amount of "Commission" as converted in rupees, will be the "taxable Value" for tax quantification or whether the following deductions can be claimed:

(a) Deducting "expenditure" on free supplies, which is a "charge on the commission amount" under the Contractual Terms as per P.O.

(b) Deduction of tax element treating amount of "net Commission" (as per (a) above) as inclusive of CGST/SGST Act or IGST Act as the case may be.

4. For the purposes of examining the issues involved one needs to go through the labyrinth of new GST Laws.

5. The prospectus of various provisions gives the following picture:

(i) Services provided by the Commission Agent (located in the Taxable Territory) to the Principal Seller (located in Non-Taxable Territory/ Abroad) in respect of procurement of order/s from the Customers located in the Taxable Territory on behalf of the foreign supplier of goods, would be termed as "taxable services" under the GST Regime, because the intermediary (Micro) does some activity for which monetary consideration, that is, "Commission" amount is received in freely convertible currency. These activities would fall in the widely worded definition of "Service", in section 2 (102), which reads:

**"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;**

(ii) Section 13 of the IGST Act, 2017 is made applicable to determine the place of service, where location of supplier or location of recipient of service (either) is outside India.

(iii) In the present case, Micro being the supplier of service (located in India in Taxable Territory) and customer i.e. recipient of Service (i.e. supplier of goods is located outside India, Germany, in Non Taxable Territory), Section 13 of the above IGST Act,2017 gets attracted.

(iv) Section 13 of IGST Act, 2017 has in all 13 sub-sections applicable to different situations/ circumstances.

- Sub-section (2) of Section 13 is the general section which provides that the place of supply of service' is the location of recipient of service, except the services specified in sub-sections (3) to (13).



- It means the general principle in sub-section (2) is displaced i.e. not applicable to sub-section (3) to (13), which needs to be examined individually & separately.
- Sub-section (8) covers the case on hand; and the same is reproduced here below -

**"(8) The place of supply of the following services shall be the location of the supplier of services, namely:**

(a) Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Intermediary services;

(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month."

(v) The term "Intermediary" is defined in Section 2(13) of the IGST Act, which says:

*"(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".*

(vi) Consequently, Micro being an Agent or Broker (or Commission Agent) and facilitator between the German -seller of the goods and the Indian-buyer of the goods, it shall be covered under the definition of Intermediary" under Section 2 (13) of the IGST Act; but may not be regarded as providing "Intermediary Services", which expression is a coined phase, by the Draftsman, and not defined in any GST Law, i.e. CGST/SGST Act 2017 or IGST Act, 2017. Apparently, "Intermediary" is an "adjective and qualifies "services". {Adjective: 4.being between; intermediate. 5. Acting between persons, parties, etc.; serving as an intermediate agent or agency: e.g. an intermediary power.}

(vi) It may be argued that the "Intermediary" providing such Agency or Broker's services may fall in the expression of "Intermediary services" appearing in clause (b) of sub-section (8) of Section 13 of the IGST Act, 2017. If it were to be true interpretation, the registered place of the Supplier (Micro) being in India / in Taxable Territory, the place of supply becomes 'India /Taxable Territory' and hence CGST + SGST may get attracted.

6. Though Micro is providing the service to the foreign supplier of goods as an integral part of the international/cross-border transaction of export/import, and also receiving valuable consideration' in freely convertible foreign exchange, but still it is not considered as 'Export of service' for the reason given in the definition of "Export of Service", quoted below, read with section 13(8) (b) of the IGST Act as all the conditions of "export of service" are not met in the case on hand:

**Conditions precedent for treating the service as 'export of service' (as per Section 2(6) of the IGST Act] - All conditions have to be met.**

"(6) "export of services" means the supply of any service when,

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8".

- A plain reading of the definition of "export of services shows that the word "means" is used while defining. Where 'means' is employed in the definition clause it shows that the definition enacted is a hard and fast one and that no other meaning can be assigned to the word "defined" than the one that is put down in the definition.

Secondly, the definition starts by saying "when" and followed by each clause ending with a semi-colon showing close connection with each other and the last but one clause uses "and", to make it clear that all the clauses must be fulfilled concurrently and coextensively & then alone it will qualify as an "export of services".

- On the superficial or flash reading, it may appear that in the present case, the condition No. (iii) in section 2/6 is not getting fulfilled because of the terminology used in section 13(8) (b) of the IGST Act, ("intermediary services") read with section 2(13) defining "intermediary" to include broker or agent who arranges or facilitates the supply of goods or services, and consequently the "place of supply" gets coincided with "the place of supplier", both in the taxable territory, India, and rendering the transaction taxable under the CGST/SGST Act, by denying the benefit of "export of services" or IGST Act legitimately due by virtue of the "recipient of Services" being in non-taxable territory, abroad. In the light of the above discussion, one may consider that the supply of services by Micro would fall in the tax-net, fastening tax burden of 18% (9% CGST + 9% SGCT) under Services Tariff Heading no.9997 (residuary entry).

7. Now, therefore, the CGST/SGST will be payable in the Taxable Territory on account of the 'place of supply', being the place where the Supplier, i.e. Micro, is registered, that is in the State of Maharashtra.

8. In the context of the case on hand, the aforesaid interpretative process makes taxable "intermediary services" rendered by Micro to the recipient abroad in non-taxable territory, liable tax in Maharashtra State, which is the place where the Supplier (Micro) is Registered and happens to be the place of supply; and fortunately further also the "destination state" or "consumption State"; because the Laboratory Equipment imported by M/S Panama Laboratory, Mumbai, would be used by the Purchasing Customer, who is also residing in the State of Maharashtra.

9. Before looking at another example, a few words on new taxation Policy. Effective July 1, 2017 there has been a paradigm shift in taxation Policy, now, adopting the destination based tax. The basic difference between the Destination based tax and origin based tax lies in the fact that origin based taxation seeks to levy and collect tax on the basis of location of production and destination based taxation seeks to levy and collect tax on the basis of location of consumption. Further, a fundamental proposition under the new GST regime is that the concept of "place of consumption" also called and known as the "Place of supply", merely determines that the tax would accrue to the State of consumption (jurisdictional aspect).



10. Now, look at another case, in which Micro procures the P.O. from the Customer at Vadodara (formerly known as Baroda), in the State of Gujarat, for purchase of Laboratory Equipment from the same Germany-seller. By virtue of section 13 (8) (b) read with 2(13) of IGST Act, the place of supply" remains the same i.e. "the place of Supplier", State of Maharashtra. But the destination based or consumption based taxation Policy would get a jolt; because the actual use of the goods imported would be in the State of Gujarat, whereas the tax will accrue to the state of Maharashtra, where the place of supplier and the place of supply synchronize.

11. The matter needs to be examined further.

12. Actually, the "nature of supply" is determined under Section 7 and 8 of the IGST Act, 2017 which reads:

CHAPTER IV

DETERMINATION OF NATURE OF SUPPLY

7. Inter-State supply. - (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in -

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in -

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both, -

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

13. It is manifestly clear from the conjoint reading of section 7 (5) of the IGST Act read with Section 13 (8) (b) that the nature of transaction on hand is taken out of the IGST Act and by virtue of the Supplier's Location and the Place of Supply make the transaction fall into the trap of the "intra-state" service and hence would attract 9% CGST+ 9% SGST, in the aggregate 18%, the services being Classifiable under the Residuary Tariff Classification, namely, 9997

14. With the result that the benefit of "Zero rated tax" defined under Section 16 of the IGST Act, 2017 is unavailable, simply because the role played by the Micro is treated as "Intermediary Services" under section 13 (8) (b) of the IGST Act.

15. As a direct consequence of this situation, although all other transactions of export of goods or service or both get the advantage of zero tax burden, the case on hand gets discriminatory dispensation by saddling it with unintended cost burden of 18%, (with another Income Tax burden @ 30%); and to add salt to the injury, Refund of such CGST/SGCT is unavailable, being "forward charge".

16. However, there is another way to look at this integrated & composite international -cross-border transaction in which the Applicant plays a pivotal role as an intermediary by virtue of which the "import of goods" is occasioned, gets effectuated.

17. Now, for this new approach two definitions are important:

• Section 2(13) of the IGST Act,2017

(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 2(5) of the CGST Act,2017

(5) "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

18. Since Micro does not supply or receive goods / services on behalf of anyone, Micro carries on business of its own, it is certainly not an "Agent" as defined in section 2 (5) of the CGST Act, 2017.

- But surely, the activities of Micro are in the nature of "intermediary" as defined in section 2 (13) of the IGST Act, for bringing together the Principals abroad ( Germany ) and the Indian Customer (M/S Panama Laboratory), who wants to buy a high-end product.
- What is received by Micro may be called "brokerage for the sale of goods. Even if it is called "commission" it is specifically understood as being in respect of and in relation to the transaction of sale of goods directly made by the German-seller and the Indian buyer, and which at the hands of the Indian-buyer, M/S Panama Laboratory, is an Import in every sense of the term.
- In other words, the nature of supply is intended to be and actually an international or cross-border transaction, export/import of goods simpliciter, which under the GST regime is "an inter-state supply,



covered by the IGST Act, 2017; and if that be the true position in law, the role of intermediary cannot be dissected and separately treated for GST law.

19. All the analysis & discussion above, finally boils down to and depends on the true meaning and purport of the expression: "intermediary services" in section 13 (8) (b) of the IGST Act. If it is not the same thing as "Intermediary", the provisions of section 13 (8) (b) will not apply; and consequently, provisions of section 7 (5) (a) of the IGST Act will get attracted, as can be seen from the quoted provision:

**(5) Supply of goods or services or both, -**

**(a) when the supplier is located in India and the place of supply is outside India;**

In that case, Section 16 of IGST Act will apply and there would be two options available: (i) export the services under bond/LOU without payment of IGST Act and claim refund of un-utilized input tax credit; OR (ii) Supply export services on payment of IGST and then claim refund of such tax under section 54 of the CGST Act/Rules, 2017. Section 16 of the IGST Act, 2017 reads:

CHAPTER VII  
ZERO RATED SUPPLY

Zero rated supply. 16. "Zero rated supply" means – (1) any of the following supplies of goods or services or both, namely:

- (a) export of goods or services or both; or
  - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of un-utilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

20. Now, the crucial question is: what is the true meaning & purport of the expression "intermediary services" appearing in section 13 (8) (b) of the IGST Act. It may be added that the term "intermediary" has been defined in section 2(13) of the IGST Act, but the expression "intermediary services." appearing in section 13 (8) (b) has not been defined. 21. What is the significance of use of the two terms/expressions, apparently looking similar, by the Legislature in the GST statutes. One thing is clear that they are not synonymous terms or expressions, having the same meaning as another word or phrase in the same language.

22. One has to construe the true meaning of the undefined expression, namely, "intermediary services", which is not simply a coined expression, but seems to have acquired a well set connotation. This expression is not used for the first time by the Legislature.

23. It may be added that this precise expression: 'Intermediary service was adopted by the Delegated Legislation while framing the Place of Provision of Service Rules, 2012 (POPS Rules, 2012). In those Rules, Rule 2 (f) had defined "intermediary" as below:

(F) "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the "main" service) between two or more persons, but does not include a person who provides the main service on his account.;

- The POPS Rules, 2012 came into force effective 01-07-2012 and Rule 9 of the said Rules, 2012 is exactly the same as now bodily lifted and placed in its new GST 'avatar' as section 13 (8) (b) of the IGST Act.
- The said Rule 9 of the POPS Rules, 2012 and the clarification issued by the Board (C.B.E.C.) on the concept of "Intermediary Services" appearing Rule 9 (C) is reproduced below:

**9. Place of provision of specified services.**

The place of provision of following services shall be the location of the service provider:

- (a) Services provided by a banking company, or a financial institution, or a non-banking financial | company, to account holders;
- (b) Online information and database access or retrieval services;
- (c) Intermediary services;
- (d) Service consisting of hiring of means of transport, up to a period of one month.

24. Clarification and Legal nemesis:

An Education Guide ("Guidance Note") on June 20, 2012 issued by the Central Board of Excise and Customs clarifying the meaning of intermediary states: QUOTE:

5.9.6 What are "Intermediary Services"? Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

- i) the supply between the principal and the third party; and
- ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

- For the purpose of this rule, "an intermediary" in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition. VIDE Rule 2 (i) of the POPS Rules, 2012 (supra).



- Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.

UNQUOTE:

---Rule 2(1) defines intermediary' to mean a broker, any agent or any other person, by whatever name called, who arranges or facilitates a provision of a service(hereinafter called the 'main service') between two or more persons (it doesn't include a person who provides service on his own account).

Thus an intermediary service is involved with two supplies at one time. In other words, the expression "intermediary" connotes distinctness/detachment from the "main" service. The expression "intermediary service" is thus, a nomen juris ("nomen juris," literally term of law; a technical legal term) and its use is having a specific legal concept and connotation. When that expression is used in any subsequent legislation, it has to be interpreted and understood in the same sense & nothing less or more. ( VIDE The Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939) was enacted in pursuance of the powers contained in entry 48 of List II of Seventh Schedule of the Government of India Act, 1935 which deals with sale of goods. The corresponding entry in the Constitution is entry No. 54 in List 11 of Seventh Schedule. It was in exercise of the powers under this entry that the Mysore Sales Tax Act, 1957 (Mysore Act No. 25 of 1957) was enacted. It is now settled law that the words "sale of goods" have to be construed not in the popular sense but in their legal sense and should be given the same meaning which they carry in the Sale of Goods Act, 1930. The expression sale of goods" is a nomen juris, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement

25. In this connection one must take a note of the Amendment to the definition of "intermediary" in Rule 2 (1) of the POPS Rules, 2012.

26. By Notification No. 14/2014 - Service Tax , dated the 11th July, 2014, The Place of Provision of Services (Amendment) Rules, 2014, were brought into force on the 1st day of October, 2014:

(1) In the Place of Provision of Services Rules, 2012,

(a) in rule 2 for clause (f), the following clause shall be substituted, namely:

(f) "intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account

- Therefore, the definition of "intermediary" was then amended to include the intermediary of goods in its scope.

- Accordingly, with effect from 1.10.2014, an intermediary of goods, such as a commission agent or consignment agent shall be covered under rule 9 (c) of the Place of Supply of Services Rules.

27. When this modified version of "intermediary" as of 01-10-2014, was re-bottled in the GST law, two changes happened:

(i) the original and basic distinction as to the "main" service and "intermediary" in the context of two co-existing services did not figure in the new definition in 2(13) IGST Act;

(ii) And the definition of Consignment Agent was shifted to Section 2(5) of the CGST Act.

28. Further, as stated earlier, there is one term: "intermediary", which is defined (section 2(13) IGST Act), and entirely different expression: "intermediary services" is used in section 13 (8) (b) of the IGST Act, which is handpicked from the Legislative phraseology adopted in Rule 9 (c) of the POPS Ruls, 2012 as it existed preAmendment of 2014, effective 01-10-2014 of section 2 (f) of the POPS Rules, 2012. The pivotal issue in the case on hand turns on the interpretation of the expression: "intermediary services" in Section 13 (8) (b) of the IGST Act.

29. At this stage, it is necessary to refer to some well known Rules of Interpretation of statutes before embarking on the interpretative process:

(i) Legislative enactment is an edict. One has to read what is expressly stated in the enactment.

(ii) It is not necessary to survey innumerable Apex Court decisions on the Statutory Rules of Interpretation. Suffice it to quote one:

- Raghunath Rai Bareja And Another vs Punjab National Bank And Others (CASE NO. Appeal (civil) 5634 of 2006 Decided on 6 December, 2006

(a) It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation.

(b) The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.

(c) Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR 2004 SC 4219.

(d) As held in Prakash Nath Khanna vs. C.I.T. 2004 (9) SCC 686, the language employed in a statute is the determinative factor of the legislative intent.

(e) The legislature is presumed to have made no mistake.

(f) The presumption is that it intended to say what it has said.

(g) Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide Delhi Financial Corporation vs. Rajiv Anand 2004 (11) SCC 625.

(h) Where the legislative intent is clear from the language, the Court should give effect to it, vide Government of Andhra Pradesh vs. Road Rollers Owners Welfare Association 2004(6) SCC 210, and the Court should not seek to amend the law in the grab of interpretation.



30. In the light of the aforesaid rules of interpretation, it can be said that when the Legislature has used two un-identical and non-synonymous terms/ expression, it has to be inferred that it did not want to convey the same meaning. It may also be noted that the Legislature does not use any surplusage or superficial words or phrases.

31. If the provisions of section 13 (8) (b) of the IGST Act, were to cover and encompass both the types of Brokers, Agents in relation to goods and services, nothing was simpler than to re-draft section 13 (8) (b) as below and say:

- Section 13(8) (b) "services of intermediary", and
- Then the word "intermediary" being defined, it would have covered the services of the Broker / Agent in relation to either the "goods" or "services" or even both.

(i) Instead, section 13(8)(b) has adopted the expression: "intermediary services" which expression was prevalent prior to 2014-Amendment of POPS Rules, 2012, which distinguishes it from the "main service",

(ii) Another reason is that that the term; Agent, appearing in the definition of "intermediary" has to be understood as excluding "consignment agent", which stands defined in section 2(5) of the CGST Act.

(iii) As laid down by the Apex Court (Delhi Transport Corporation vs. D.T.C. Mazdoor Congress on 4 September, 1990), the doctrine of reading down is applied where the provisions of the statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made.

(iv) In the case on hand, the section 13(8) of the IGST Act is intended to apply to specified "services", and clauses (a) and (c) relate to "pure services". Clause (b) cannot take in its fold "services in relation to goods"; because the entire GST Law maintains dichotomy between the "goods" and "services".

(v) Further, it is well settled that every word or phrase in a clause takes colour from the other related clauses in the same section, namely, sub-section (8), section 13 of IGST Act.

(vi) As stated earlier, if the Legislature wanted to have wider meaning of "services", it would have used the phraseology "services of intermediary" rather than "Intermediary services".

(vii) It is not open to inject definition of "intermediary" as Amended in 2014, by interpretative process when the context of Section 13 (8) is specifically restricted & made applicable to specified/selected services.

(viii) When reading "intermediary" as an adjective, one has to give due meaning to it and read that expression to convey those "services" which are contradistinguished from the "main" services.

(ix) In other words, the clause must be held as applicable if the intermediary is acting as broker / agent in the main transaction of supply of services between the service provider and the service recipient; and not where the seller is supplying "goods" to the buyer or recipient of supply / goods.

(x) Any other interpretation would be against the Legislative mandate expressed from the phraseology used to pinpoint its intention.

(xi) It is well settled:

134. Thus, the language of a taxing statute should ordinarily be read understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. Govt. of A.P. and Anr. 2006(13) SCALE 27, Raja Jagadambika Pratap Narain Singh v. C.B.D.T., [1975] 100 ITR 698(SC))

(xii) Moreover, it is settled law that by an interpretative process the legislative edict cannot be altered or re-written to bring out presumed intention.

32. In conclusion, it is respectfully submitted :

- The defined term or phrase must receive the same meaning throughout the statute.
- When the Legislature uses a particular phraseology, full meaning must be given by following the rules of English grammar. In that sense, the word: "intermediary" being an adjective of services, in section 13(8) (b), the defined word: "intermediary" cannot be brought-in to inject the concept of services relating to goods.
- The expression, "intermediary services" had acquired definite connotation when the POPS Rules, 2012 were brought in to play, namely, the services differentiated from the "main services". Since the term "intermediary services" is nomen juris, the GST Law when it uses it, then it must be understood in that sense only.
- It therefore, follows that the section 13(8) (b) cannot be held as taking away the benefit of export service to Micro as the supplier of service is in the Taxable Territory and the recipient is in the non-taxable territory. Therefore section 7 (5) (a) of the IGST Act:

(5) Supply of goods or services or both, -

(a) when the supplier is located in India and the place of supply is outside India;

Will apply, and consequently "zero-rated tax" benefit under section 16 would be available.

PRAYER:

33. The Applicants most respectfully pray that the application be allowed, and

(a) that it be held that there will be no CGST/SGST applicable on the services provided by the Intermediary (Micro) acting as a Broker to facilitate Imports of goods by the Indian Customer from the Seller-supplier (Germany) under the cross-border transaction.

(b) If in the unlikely event it is held that either CGST/SGST or IGST is payable, then:

(i) the rate of GST payable,

(ii) and the "taxable value", gross or net commission ( after deducting value of free supply of goods by Micro, as per PO) for levy of GST may also be determined.

(c) The Applicants crave leave to add , delete or modify the submissions made herein either before or at the time of hearing.

STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED

IV-STATUTORY PROVISIONS:

7. Before proceeding to make legal submissions, it is necessary to Review the statutory provisions of law:

(i) Section 2 of the IGST Act:

"export of services" means the supply of any service when, -

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

(ii) Section 13 of the IGST Act is made applicable to determine the 'place of service', where location of supplier or location of recipient of service (either) is outside India.

(iii) In the present case, the supplier of service is located in India and customer i.e. recipient of Service is located outside India, Germany; hence Section 13 of the IGST Act gets attracted.

(iv) Section 13 of IGST Act:

- Sub-section (2) of Section 13 is the general section which provides that the place of supply of service' is the location of recipient of service, except the services specified in sub-sections (3) to (13).
- It means the general principle in sub-section (2) is displaced i.e. not applicable to sub-section (3) to (13), which needs to be examined individually & separately.
- Sub-section (8) covers the case on hand; and the same is reproduced here below -

*"(8) The place of supply of the following services shall be the location of the supplier of services, namely:*

(a) Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Intermediary services;

(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month."

(v) The term "Intermediary" is defined in 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".

(vi) Consequently, the Applicant being a Broker (or Commission Agent) and facilitator between the German -seller of the goods and the Indian-buyer of the goods, shall be covered under the definition of Intermediary" under Section 2 (13) of the IGST Act bringing about a deal for export-import of goods/equipment, a cross-border transaction in the nature of inter-state sale under IGST Act.

IV-STATUTORY PROVISIONS: RULES OF INTERPRETATION:

At this stage, it is necessary to refer to well settled Rules of Interpretation of statutes:

(i) Legislative enactment is an edict. One has to read what is expressly stated in the enactment.

(ii) It is not necessary to survey innumerable Apex Court decisions, suffice it to quote one:

Thus, in Madamanchi Ramappa & Anr. Vs. Muthaluru Bojjappa AIR 1963 SC 1633 (vide para 12) the Apex Court observed:

"What is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be must yield to clear and express provisions of the law."

(iii) The first and foremost principle of interpretation of a statute is the literal rule of interpretation.

(iv) The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.

(vi) Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR 2004 SC 4219.

(vii) (vi) As held in Prakash Nath Khanna vs. C.I.T. 2004 (9) SCO 686, the language employed in a statute is the determinative factor of the legislative intent. (vii) The legislature is presumed to have made no mistake.

(viii) The legislature intends to say, what it has said.

(ix) Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide Delhi Financial Corporation vs Rajiv Anand 2004 (11) SCC 625.

V--LEGAL SUBMISSIONS:

9. In the light of the aforesaid rules of interpretation, it can be said that when the Legislature has used two un-identical and non-synonymous terms/ expression, it has to be inferred that it did not want to convey the same meaning. It may also be noted that the Legislature does not use any surplusage or superficial words or phrases.





10. If the provisions of section 13 (8) (b) of the IGST Act were intended to cover and encompass both the types of Brokers, Agents in relation to goods and services, nothing was simpler than to redraft or re-write section 13 (8) (b) as below and say:

- Section 13(8) (b) "services of intermediary", and
- Then the word "intermediary" being defined, it would have covered the services of the Broker / Agent in relation to either the "goods" or "services" or even both.

11. Section 13(8) (b) has, however, adopted the expression: "intermediary services" which expression was prevalent prior to 2014-Amendment of POPS Rules, 2012, which distinguishes it from the "main service".

**There are other weighty reasons:**

(i) As laid down by the Apex Court (Delhi Transport Corporation vs. D.T.C. Mazdoor Congress on 4 September, 1990), the doctrine of reading down is applied where the provisions of the statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made.

• In the case on hand, the title of section 13(8) of the IGST Act shows that it is meant to "apply to specified services", and clauses (a) and (c) relate to "pure services". Clause (b) cannot take in its fold "services" in relation to "goods"; because the entire GST Law maintains dichotomy between the "goods" and "services". Section 2(102) of the CGSST Act: "services" means anything other than goods, money and securities but includes...

(ii) Further, it is well settled that every word or phrase in a clause takes colour from the other related clauses in the same section, namely, sub-section (8), section 13 of IGST Act. (iii) As stated earlier, if the Legislature wanted to have wider meaning of "services", it would have used the phraseology "services of intermediary" rather than "Intermediary services".

(iv) It is not open to inject definition of "intermediary" as Amended in 2014, by interpretative process when the context of Section 13 (8) is specifically restricted & made applicable to specified/selected services.

(v) The term "intermediary" in section 13 (8) is an as an adjective of the noun that follows, namely, "services", one has to give due meaning to it and read that expression to convey only "Intermediary services" which are different from the "main service/s".

(vi) By process of reading down, the clause must be held as *applicable only if the "intermediary" is acting in the main transaction of supply of services between the service provider and the service recipient, and not where the seller supplies "goods" to the buyer or recipient of supply.*

(vii) Any other interpretation would be against the Legislative mandate used to pin-point its intention.

(viii) It is well settled:

**\*Thus, the language of a taxing statute should ordinarily be read understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. Govt of A.P. and Anr. 2006(13) SCALE 27, Raja Jagadambika Pratap Narain Singh v. C.B.D.T., (1975) 100 ITR 698(SC))**

(ix) It is settled law that by an interpretative process the legislative edict cannot be altered or re-written to bring out presumed intention.

(x) **The expression, "intermediary services" had acquired definite connotation when the POPS Rules, 2012 were brought in to play, namely, the services differentiated from the "main services". Since the term "intermediary services" is nomen juris, the GST Law when it uses it, then it must be understood in that sense only. (State of Madras vs. Gannon Dunkerley & co)**

12. In conclusion, it is respectfully submitted:

(a) The defined term or phrase must receive the same meaning throughout the statute, unless context compels otherwise.

(b) When the Legislature uses a particular phraseology, full meaning must be given by following the rules of English grammar. In that sense, the word: "intermediary" being an adjective of services, in section 13(8) (b), the defined word: "intermediary" cannot be brought-in to inject the concept of services relating to goods.

(c) The expression, "intermediary services" had acquired definite connotation when the POPS Rules, 2012 were brought in to play, namely, the services differentiated from the "main services". Since the term "intermediary services" is nomen juris, it must be interpreted in its legal sense only.

(d) It therefore, follows that the section 13(8) (b) cannot be held as taking away the benefit of export service as defined in section 7 (5) (a) of the IGST Act. Consequently "zero-rated tax" benefit under section 16 would be available.

**VI-PRAYER:**

13. In the circumstances, the Applicant most respectfully prays:

(a) That it be held that the services of the Applicant as an intermediary are "received & consumed" by the Principals in Germany, and as such "the place of supply is Germany" as per section 13(2) of the IGST Act, and hence all the conditions in section 2(6) are concurrently fulfilled qualifying the impugned services as "export of services"; and hence 'zero rated supply' in terms of section 16 of the IGST Act,

(b) If this Honourable Authority holds that either CGST/SGST or IGST is payable, then the "taxable value", and net CGST/MGST or IGST payable may please be determined specifying the rate of GST & computation methodology.

(c) Any other or further relief as may be deemed fit, proper & reasonable by this Honourable Authority, on the facts & circumstances, may please be granted to the Applicant.

**03. CONTENTION – AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

In a submission dated 27/06/2018, the registered dealer M/s. Micro Instruments has given elaborative submission before Maharashtra Authority for Advance Ruling.

I wish to submit few points before Authority in relation to submission by dealer.

A. Under heading "Question of Law", the dealer has sought ruling from Authority that whether Transactions summarized in "Brief Facts" fall under Export of Services under Section 2(6), attracting Zero rated Tax under Section 16(1)(a) of IGST Act 2017.

Section 2(6) of IGST Act states

(6) "export of services" means the supply of any service when ---

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

- As per Section 97(2) of CGST MGST Act 2017, The question on which the advance ruling is sought under this Act, shall be in respect of

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) 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.

Whether a transaction is Export of Services or not is dependent upon the fact as to whether Supply of Services is out of India or Not. Consequently, if the MAAR proceeds ahead with examination and consideration of this fact, discussion and findings on aspect of place of supply will be inevitable.

The Act limits AAR to decide issued earmarked for it under Section 97(2) of MGST/CGST Act. Therefore, where a question also involves examination of place of Supply (which is not amongst the issued which can be decided by AAR), the question cannot be taken by the authority for lack of jurisdiction.

(Ref:- Decision by Haryana Authority for Advance Ruling HAR/HAAR/R/2018-19/6).

- Secondly, we may refer to submission by dealer under heading Rules of Interpretation (Page No-6, point No-ii) which argues about "consideration must yield to clear & express provisions of the law". Also, as per point No vi and vii, dealer has quoted that - "legislature is presumed to have made no mistakes and legislature intends to say, what it has said."

Without prejudice to above, I further submit that dealer's contention to differentiate intermediary Service for Service and intermediary Services for goods is not correct. The dealer has pointed out dichotomy between goods and Services and has argued that Section 13(8) connotes to Specified Services for Services and not for goods. He has argued to differentiate between Intermediary Services and Services of intermediary.

It must be noted that the constitution (one hundred and first amendment) act, 2016 was passed by Parliament to merge taxation between for goods and Services. Also, the IGST Act categorically defines Nature, place, time and Zero rated Supply. Section 13 of IGST Act expressly provides Place of Supply as per location of Suppliers, recipient and nature of Service.

It is an established principle of interpretation that in case of apparent conflict between two provisions, the Specific provision prevails over general provision. Section 13(8) is a specific provision, where place of Supply is decided as - "location of Supplier".

**Hence dealer's application cannot be maintained under heading with question of law that whether said transaction is Export of Services or not. Dealer's application may please be rejected.**

In addition, the location of Supplier is in Mumbai. Thus, the type of supply should be Intra-state. Hence he is liable to pay CGST+SGST for supply of Services as per section 13(8) (b).

**04. HEARING**

Preliminary hearing in the matter was held on 27.06.2018, when Sh. D. P. Bhave, Advocate along with Sh. Ajay Wadke, C.A. duly authorized appeared and requested for admission of application as per details in their application. Jurisdictional Officer Sh. Nitesh Bhandari, Asstt. Commr. of S.T. (D-906), Mumbai was present and stated that they would be making detailed submissions in due course.

The application was admitted and called for final hearing on 24.07.2018, Sh. D. P. Bhave, Advocate along with Sh. Ajay Wadke, C.A. appeared and made oral and written submissions. The Jurisdictional Officer, Sh. Rishikesh Wagh, Asstt. Commr. of S.T. (D-906), Mumbai appeared and stated that they would be making submissions immediately.

05. OBSERVATIONS

We have gone through the facts of the case, submissions made by the applicant and the documents on record. The applicant, Ms Vishaka Prashant Bhave, is the proprietor of the firm M/s Micro Instruments (hereinafter referred to, as 'MI') and had made the subject application in her capacity as a proprietor.

Briefly stated, MI is providing services to its Principals at Germany, by way of procuring Purchase Orders (P. O.) from the parties in India who desire to purchase advanced type of Laboratory Equipment from their Principals. A floor price is fixed by the Principals for the said equipments and MI negotiates the terms of supply including fixation of price above such floor price, for which they receive commission in convertible foreign exchange". After the negotiations are concluded, the prospective customer in India places the order directly on the Principals at Germany, arranges for remittance of purchase price arrived at and the material is directly supplied to them by the foreign Principals. The applicant has submitted that in most cases the P. O. states the name of MI and also mentions that the Indian Purchaser will be entitled to have some discounts to be provided by MI, which is thus provided by MI. Services with respect to the materials purchased are to be provided by the foreign Principals and not by MI. On the basis of the above said facts, the applicant has raised the main question as to whether the commission received by them as an "Intermediary" in International/ cross border transaction, for acting as a Broker or facilitator, in procuring from an Indian Customer/s purchase order/s (P.O.) for importing Laboratory Equipment from Germany, is liable to GST either under CGST/SGST Act, 2017 or the IGST Act, 2017?

In simple terms 'intermediary' can be explained as a firm or a person, etc. who acts as a link between parties for the conduction of business, etc. We find from the question posed that the applicant is of the opinion that they are providing services as an intermediary. The facts also reveal likewise and therefore we first take up the definition of an intermediary as per GST laws.

The term 'Intermediary' is defined in Section 2(13) of IGST Act, 2017 as:- *'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"*

From the above definition we find that an intermediary can be a broker, an agent or any other person who arranges and facilitates the supply of goods and/or services between two or more persons and who cannot change the nature of supply as provided by the principal.

From the facts before us we find that MI is covered by the said definition of an intermediary because they are definitely acting as a broker and facilitating the process for sale of materials by their foreign principals to the Indian parties because they locate the customer, negotiate the prices and probably ensure the sale, they also provide for discounts to the said customers, out of the commissions received by

them, as mentioned in the PO. It is very clear from the facts of transaction that the applicant is neither providing services nor supplying the goods on their own account.

The applicant at point no. 5 of their submission have clearly stated that the services provided by them in the subject case would be termed as "taxable services" under the GST Regime, because they do some activity for which monetary consideration, that is, "Commission" amount is received by them, in this case, in freely convertible currency. We agree with this contention of the applicant that they are providing taxable services in the instant case.

Since the applicant, being the supplier of service is located in India and the recipient of Service i.e. supplier of goods is located outside India, Section 13 of the IGST Act, 2017 would be applicable to determine the place of service. As per Section 13 (8) (b) of the said Act, **the place of supply of Intermediary Services shall be the location of the supplier of services**, in this case, the applicant. Since the place of supply of services in the instant case is in taxable territory, the said intermediary services cannot be treated as export of services under the provisions of the GST laws.

In order to classify as 'export of service', as per section 2(6) of the Integrated Goods and Service Tax Act, 2017, one of the crucial condition as contained under sub-clause (iii) requires that the place of supply of service should be outside India. In the subject case, the place of supply shall be location of the supplier of services and therefore such 'intermediary services' cannot be classified as 'export of services'.

Further, we find that their contentions that though they are covered under the definition of 'Intermediary', the services being provided by them are not 'Intermediary Services' are not tenable for the reason that they are very clearly covered under the definition of 'Intermediary' and the services being provided by them are clearly the services as given in the definition of 'Intermediary', as referred in the discussions above.

We now discuss Inter-state provisions as well as Intra State provisions under the GST laws as follows:-

Inter State provisions are contained under section 7 of the Integrated Goods and Service Tax Act, 2017 and since none of the specific provisions are applicable, residuary provision contained under section 7 (5) (c) shall be made applicable in the case of intermediary service, which states that inter-state supply of goods or services or both in the taxable territory shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce, however, the same should not be an intrastate supply and should not be covered elsewhere in section 7 of the IGST Act.

Section 8 of the Integrated Goods and Service Tax Act, 2017 deals with the provisions of intra-state. Applying the provisions of section 8 (2) which states that 'subject to the provisions of section 12, in case where the location of the supplier and the place of supply of services are in the same state or in the same union territory, the supply of service shall be treated as intra-state supply'.

The above provisions of inter-state supply and intra-state supply have clarity when both the recipient and the supplier of services are located in India. However as in the subject case, when the recipient is located outside India provisions of section 7(5)(c) shall be applicable. Section 7(5)(c) is reproduced as follows:-

*Supply of goods or services or both-*



- a) When the supplier is located in India and the place of supply is outside India.  
b) To or by a Special Economic Zone developer or a Special Economic Zone unit: or  
c) In the taxable territory, not being an intra-State supply and not covered elsewhere in this section.  
shall be treated to be a supply of goods or services or both in the course of inter-State-trade or commerce.

As per intra-state provisions contained in Section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act. As per section 12, the provisions of section 12 would be applicable only for determining the place of supply of service where the location of supplier of services and the location of recipient of the services is in India. When recipient is located outside India the said provisions of section 12 cannot be made applicable and since provisions of section 8(2) are inter-linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India.

Thus we find that in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5) (c) shall be applicable and hence IGST is payable under such transaction.

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- 23/2018-19/B- 87 Mumbai, dt. 10/8/2018

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

Question :- (i) Whether the "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 an "export of service" falling under section 2(6) & outside the purview of section 13 (8) (b), attracting zero-rated tax under section 16 (1) (a) of the Integrated Goods and Services Tax Act, 2017?

Answer :- Answered in the negative.

Question :- (ii) If the answer to the Q. (i) is in the negative, whether the impugned supply of service forming an integral part of the cross-border sale/purchase of goods, will be treated as an "intra-state supply" under section 8 (1) of the IGST Act read with section 2(65) of the MGST Act attracting CGST/MGST? And, if so, at what rate?

Answer :- The said supply will be treated as Inter-State supply and not intra state supply and IGST will be levied @ 18%.

PLACE - Mumbai

DATE - 10/8/2018



—sd—  
B. V. BORHADE  
(MEMBER)

—sd—  
PANKAJ KUMAR  
(MEMBER)

**CERTIFIED TRUE COPY**

**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 jurisdictional Commissioner of Central Tax
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, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.