

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. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AADCT2652D1ZK
Legal Name of Applicant	TELSTRA TELECOMMUNICATION PVT.LTD.
Registered Address/Address provided while obtaining user id	B-WING,UNIT NO.4, TIMES SQUARE BUILDING, 3 rd FLOOR, ANDHERI KURLA ROAD, ANDHERI(EAST), MUMBAI-400059
Details of application	GST-ARA, Application No. 82 Dated 01.10.2018
Concerned officer	Dy. Commissioner of State Tax (e-638), Large Tax Unit-4, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Recipient
B Description (in brief)	Internet Connectivity Service
Issue/s on which advance ruling required	(iv) admissibility of input tax credit of tax paid or deemed to have been paid. (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 02 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 TELSTRA TELECOMMUNICATION PVT.LTD., the applicant, seeking an advance ruling in respect of the following questions :-

- a) Whether in the facts and circumstances in the case of supply involving leased circuit services where a pan India contract for supply of such services is entered into without any State wise breakup for the supply it would be in order for the supplier of such services to charge Integrated Tax (under IGST Act) pursuant to the Explanation to Section 12(11)(d) which provides that place of supply, where the leased circuit is installed in more than one State and the value for service cannot be determined in absence of a contract, shall be on such other basis as prescribed i.e. the same would be the location of recipient of service.
- b) In a case where the location of the service provider on pan India basis is Delhi and that of the recipient is Mumbai whether in the facts and circumstances, it would be Integrated tax that would be chargeable since no rules have been prescribed pursuant to Sec 12(11)(d) as aforesaid and therefore whether it would be in order for the recipient to take credit of such Intergraded tax since the said services are used in the course or furtherance of business namely provision of last mile connectivity services to the recipient of services.



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-

2. Facts of the Case:

- 2.1 The Applicant is primarily engaged in providing internet connectivity services. It has been granted a license by the Department of Telecommunications in this regard. As a part of the internet connectivity services, the customers may also mandate the Applicant to provide colocation services and leasing of certain customer premises equipment i.e. routers, modems, etc.
- 2.2 In order to provide the connectivity services, the Applicant has leased various PoP (Point of presence) across different states in India. The arrangement to provide the last mile connectivity service can be understood with the help of below example:

A customer comes with a request to connect one of his office located in a particular State to another office located in a different State. The data is transferred from the Customer premises equipment (CPE) located at customer's end to the nearest POP of the Applicant through leased lines owned by third party. The Applicant enters into a contract with leased circuit/ leased line owner to provide the **said service**. From the POP of the Applicant located nearest to designated location, data is directed and transferred through leased line to the final destination.

- 2.3 The Applicant decides to lease a PoP on the basis of the customer base in a particular State / zone of the country. Further the Applicant enters into a contract/ agreement with a third party vendor who is providing leased circuit services across the country, such as Tata Teleservices, Bharti Airtel etc. to provide the last mile connectivity service. A flow diagram is attached as Annexure A to explain how the service is rendered to the customer via POP of the Applicant located in a state to the location of customer.

3. Interpretation of Law:

At the outset, the Applicant would like to submit that it has obtained registration in terms of Section 22 (2) of the CGST Act. Consequently, the Applicant shall qualify as a 'registered person' in terms of the CGST Act and the provisions of the CGST Act shall apply accordingly. The interpretation of applicable law with regard to the internet connectivity services provided by the Applicant is as follows:

3.1 Registration requirement:

- 3.1.1 The Applicant would like to submit that in terms of Section 22 of the CGST Act, a supplier is liable to be registered *in the State from where he makes a taxable supply*. In other words, the supplier is required to register in all the States which qualify as the location of the supplier.
- 3.1.2 It is thus, essential to make a reference to the definition of location of supplier' in terms of the CGST Act.

3.2 Location of supplier of services:

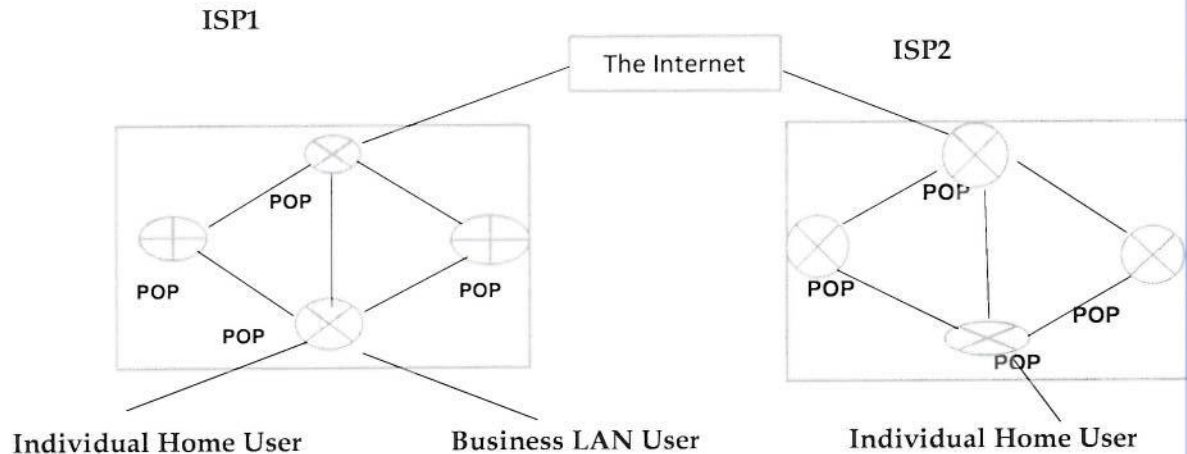
- 3.2.1 Section 2(71) of CGST Act, Location of supplier of services means:
 - (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;



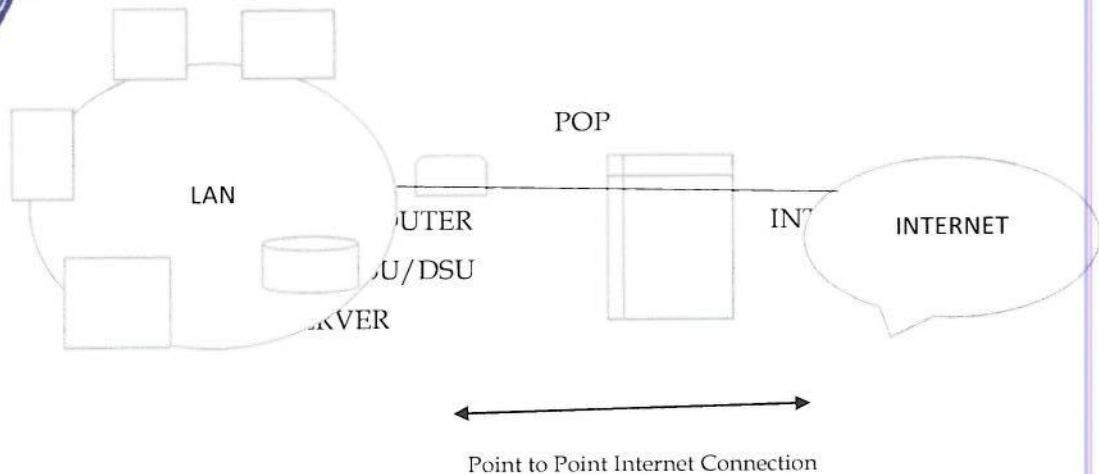
(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

3.2.2 In terms of Section 22(1) of CGST Act as mentioned above, a supplier is liable to take registration in the State from where he makes taxable supply of service. While in case of supply of internet connectivity service, it is not feasible to determine from where the supply is made since the data travels from one POP to another pop. This phenomenon is illustrated via a diagram showing the possible flow of data:



3.2.3 Further, POP cannot be considered as fixed establishment. *Fixed establishment as defined under Section 2(50) of CGST Act means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.* An internet POP typically houses servers, routers, network switches, multiplexers and other network interface equipment. It may not require permanent human resources on site and are maintained electronically. Therefore, Pop may not qualify as fixed establishment and thus may not be considered as location of supplier. A pictorial representation of a typical POP is given below:



3.2.4 Considering the fact that it not feasible to determine location of supplier in case of supply of internet connectivity service under clause (a), (b) or (c), clause (d) of Section 2(71) has to be relied upon. Clause (d) of the said Section provides that the location of supplier shall be the usual place of residence of supplier, which in the case of company would be the place where the said Company is incorporated or registered.

3.3 Place of Supply:

- 3.3.1 It is imperative to determine the place of supply in order to charge the correct tax i.e. Central Tax and State Tax in case of intra-state supply or Integrated Tax in case of inter-state supply.
- 3.3.2 Place of supply in case of telecommunications services including data transfer, broadcasting, cable and D2H television services has been provided under Section 12(11) of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the IGST Act'). The same is reproduced below:

Section 12(11) of Integrated Tax Act, 2017

- a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
- b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
- c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, -
- (i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
- (ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold;
- d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation - Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

3.3.3 Section 12 (11) of IGST Act as referred above determines the place of supply in case of telecommunication services. In order to confirm which provision of the aforementioned Section shall be applicable in the case of the Applicant, it would be necessary to make reference to each of the Clause referred above. Clause (a) of the said section helps to determine the place of supply in case of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna. Clause (b) provides for place of supply in case of mobile connection services for telecommunication and internet services on post-paid basis. Clause (c) provides for place of supply in case of mobile connection services for telecommunication, internet service and D2H television services on pre-paid basis.

3.3.4 In the clauses referred above, internet connectivity service provided by Applicant is not covered and therefore the place of supply in case of internet connectivity service shall be determined in accordance with residual clause (d) of the said section. Clause (d) of Section 12(11) states that the place of supply in *other cases* i.e. in case the place of supply for telecom services cannot be determined in accordance with above clauses (clause a, b and c), shall be the address of recipient as on the records of supplier. Therefore, the place of supply in case of internet connectivity service would be determined on the basis of address of the recipient as per the records of the supplier. In case address of recipient is of a State other than location of supplier, it would be considered as inter-state supply, if it is in the same State then it will be considered as intra-state supply.

Scenario 1: Applicant's location is Mumbai (Maharashtra), address on records of recipient is say Pune (Maharashtra), Central Tax and State Tax of Maharashtra shall be charged on such supply.

Scenario 2: Applicant's location is Mumbai (Maharashtra), address on records of recipient is say Delhi (Delhi), Integrated Tax on such supply shall be charged.



3.3.5 Having made the submissions relating to the place of supply for the outward supplies, it shall also be relevant at this stage to discuss the place of supply provisions for inward supplies. This is in light of the fact that ITC can be availed only in respect of the Central Tax and State Tax charged to the Applicant, where the place of supply is in the State where the Applicant is registered. With regard to the input services and the corresponding input tax credits which are the subject matter of the application, the Applicant states as follows:

3.3.5.1 Leased circuits are one of the major input services required by Applicant to provide the connectivity service. The said input service is required to provide the internet connectivity at the customer's premises by connecting CPE (Customer Premises Equipment) installed at customer's location to the nearest POP (Point of Presence) of the Applicant. Hence without the leased circuits customer cannot be connected to the Pop of the Applicant and therefore the same becomes an important input service used by the Applicant in the course or furtherance of business i.e. for providing last mile internet connectivity service. Clause (a) of Section 12(11) of IGST Act, provides that place of supply in case of leased circuits shall be the place where leased circuits are installed for receipt of services.

3.3.5.2 Explanation to Section 12(11)(d) provides that where leased circuit is installed in more than one state and a consolidated amount is charged for supply of services relating to circuit and there is no agreement or contract to determine the value of services, the place of supply shall be on such other basis as may be prescribed.

3.3.5.3 In cases where Applicant enters into a consolidated contract with the leased circuit provider located across India and it is not feasible for the Applicant to determine the value of service provided in a particular state in such case the place of supply would be determined in terms of Section 12(11)(d) of IGST Act. Further a reference can be made to the case of Suresh Kumar Bansal Versus Union of India (2016 (43) S.T.R. 3 (Del.)) wherein was held that if there is no mechanism to ascertain the value of a particular service, service tax cannot be levied on the same. The principle which can be derived from this case is that if there is no procedure prescribed under a statute, the same would be considered as outside the levy of that particular statute. Hence, in case where place of supply cannot be determined as the statute has not prescribed a mechanism (explanation to Section 12 (11)(d)) the levy of tax whether CGST and SGST or IGST cannot be determined and therefore the particular service could be considered as outside the levy of tax. Alternatively a view can also be taken that in case there is no prescribed mechanism in law then the residuary rule can be resorted to.

3.3.5.4 Hence considering the alternative view, the residual clause can be referred to determine the place of supply in cases where vendor have leased circuit installed in multiple states and there is no provision in the Agreement or Contract to determine the value of service attributable to each state, the place of supply as per residual clause (Section 12 (2)) shall be the location of registered person. (Scenario 3)

Input tax credit

3.4.1 The Applicant has leased multiple Pops across different states in India. Applicant has obtained registration of the premises in accordance with the provisions of Section 22 of CGST Act. It raises invoices to the customer from the State where it has been incorporated i.e. Mumbai (Maharashtra) which would be considered as location of supplier as discussed in above Para. Further on the basis of the address on records of the recipient (customer) which is the place of supply as determined above, the Applicant charges Central Tax and State Tax or Integrated Tax.

3.4.2 The leased circuits to provide the last mile connectivity service are not owned by the Applicant. Applicant provides connectivity service through the bandwidth it has taken on the leased line operated by other internet service operators. Applicant avails leased circuit facility from third party local vendors to connect its PoP to the CPE installed at customer's premises. Place of supply in case of leased circuits is the place where leased circuits are installed and in case of a composite contract place of supply would be determined on such other basis as may be prescribed.

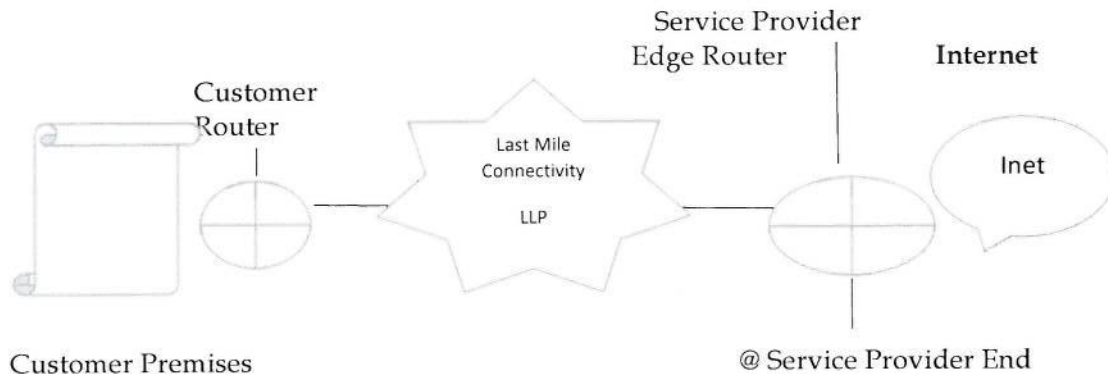
3.4.3 Applicant wishes to submit that the Explanation to Section 12(11)(d) of IGST Act shall be relied upon in case of composite contract for leased circuit facility. The same is reiterated below:
Explanation. --Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.



As discussed above, an inference can be drawn from the case of Suresh Bansal that the residual clause can be referred in case specific mechanism is not prescribed under law, therefore the place of supply in such case shall be the location of registered person. The implication of said provision can be understood with the help of below Scenario (3):

Scenario 3: Applicant is located in Maharashtra and the customer is also located in Maharashtra therefore the applicant will charge CGST and SGST of Maharashtra. While the vendor providing leased circuit service is based in Haryana. In case the vendor determines place of supply in terms of Explanation to Section 12(11)(d), he may charge IGST (i.e. location of registered person which in the current scenario would be Maharashtra). Hence, the ITC of tax charged by vendor can be availed and utilized by Applicant.

Connectivity Diagram - Internet Services



Customer Premises

@ Service Provider End

Legend :

Last Mile - Service has been subscribed from Airtel/Tata to extend the physical connectivity from Service Provider POP to Customer Premises

Router - Router is a networking device that forwards data packets between computer networks. A router is connected to two or more data lines from different networks and extended to customer LAN for using internet. Cisco & Juniper are major manufactures of network devices especially Routers, Switches & Security appliances .

Additional submission of applicant on 24.12.2018

Submission on maintainability of Advance ruling application: -

1. As per Section 97 (2) of Central Goods and Services Tax Act, 2017, following are the questions on which advance ruling can be sought:

- classification of any goods or services or both;
- applicability of a notification issued under the provisions of this Act;
- determination of time and value of supply of goods or services or both;
- admissibility of input tax credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods or services or both;
- 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.

2. In the present case, Applicant wishes to seek an advance ruling for determination of liability to pay tax **on receipt** of services. Subsequently, Applicant also wish to seek an advance ruling in relation to admissibility of input tax credit of tax paid or deemed to have been paid.

3. In light of the above, Applicant would like to submit that the question (e) as envisaged under Section 97(2) of CGST Act may also cover the situation where the recipient of may wish to seek an advance ruling in order to determine the tax liability on the goods or services received. Further, in the said question it is not specifically mentioned whether the advance ruling in relation to determination of tax liability on goods or services can be sought only by the applicant being service provider. Hence, giving a restrictive meaning to this question or limiting the scope only to the service provider shall be ultra vires the provisions of law and the same may not be the intent of the legislature drafting the law.

4. In this regard, Applicant wish to submit that it is a well-established principle of interpretation that words cannot be added to interpret a provision when the language is unambiguous. Where



a provision is unambiguous, it has to be interpreted in the literal sense. The provision has to be read as it is and its meaning is to be derived from a plain reading of the provision. Also, words cannot be added in a provision or words cannot be read into it when such words are not there and have been deliberately left out.

In this respect, Applicant wish to refer to the principle enunciated by the Supreme Court of India in **State v. Parmeshwaran Subramani 2009 (242) E.L.T. 162 (S.C.)** in a criminal appeal. The relevant extract of the decision is as follows:

"15. In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot **add words to a statute or read words into it which are not there**. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony"

5. Further, in case of **B. Premanand v. Mohan Koikal (2011) 4 SCC 266** the Supreme Court observed that while interpreting a statute the basic principle of literal rule of interpretation has to be followed. The relevant extract of the decision is as follows:

"9. 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. 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. 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 v. Securities and Exchange Board*, AIR 2004 SC 4219."

6. In **Commissioner of Income Tax Kerala v. Tara Agencies 2007 (214) E.L.T. 491 (S.C.)** the Supreme Court held that:

"67. Therefore, the legal position seems to be clear and consistent that it is the bounden duty and obligation of the court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated."

7. Applicant wish to also refer to the judgement of the **Allahabad High Court in Mayfair Leather Exports (Pvt.) Ltd. vs Union of India 2011 (272) E.L.T. 193 (All.)** wherein it was held that:

"20. The provision of an Act is to be read in the manner as it exists in the statute book and it is a well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. The court cannot add words to a statute, or change its language, in particular when on a plain reading meaning becomes clear.

8. In **Sri Jeyaram Educational Trust v. A. G. Syed Mohideen, AIR 2010 SC 671**, the Apex Court while saying that a provision of statute should have to be read, as it is, in a natural manner plain and straight, without adding, substituting or omitting any words, held as under :- "While using the tools of interpretation, the Court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A Court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is a vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the Legislature intended it to be."



9. Thus, if the interpretation as drawn by the authorities is accepted, it would be a case of adding or deleting something from the provision, which is not permissible.

Position under erstwhile regime:

10. Under service tax regime, an application for advance ruling can only be made by certain specified applicants as defined under Section 96A(b) of the Finance Act, 1994. Further, the application for advance ruling can be made in relation to following questions:

- (a) classification of any service as a taxable service under Chapter V;
- (b) the valuation of taxable services for charging service tax;
- (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;
- (d) applicability of notifications issued under Chapter V;
- (e) admissibility of credit of duty or tax in terms of the rules made in this regard;
- (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

11. The questions on which advance ruling can be sought under earlier regime is similar to the provisions under GST law except the purpose for which advance ruling can be sought and the definition of applicant, as defined under Finance Act, 1994. In service tax regime, the advance ruling can be sought by **specified applicants** who proposes to undertake any business activity in India; however, under GST regime advance ruling can be sought by an **applicant** for a proposed transaction or transaction already undertaken by the applicant.

12. Under CGST Act, the word 'applicant' has not been defined unlike as defined under Finance Act, 1994. Therefore, an inference can be drawn that the word applicant would include the supplier or the recipient of goods or services.

Rulings under GST:

13. Applicant wish to refer to the following rulings where the authority of advance ruling has pronounced rulings sought by the recipient of goods or services:

(a) In the Authority for Advance ruling- Madhya Pradesh Goods and Services Tax, in case of **Madhya Pradesh Poorv Kshetra Vidyut Vitran Company Ltd (2018 TIOL-234-AAR-GST)**, the applicant has sought a ruling to know whether the benefit of concessional rate under a specified Notification would be applicable and determination of liability to pay tax on the work contract services received by it.

(b) Rajasthan Authority for Advance ruling Goods and Services Tax in case of **M/s Chambal Fertilizers & chemicals ltd (2018-TIOL-161-AAR-GST)**, the appellant has sought ruling on the applicability of GST on Ocean freight charges on import of raw materials or fertilizers. The Authority for Advance ruling in the said case held that the applicant is liable for payment of IGST under reverse charge on Ocean freight charges for receipt of transportation service.

(c) Maharashtra Authority for Advance Ruling in the case of **Reliance infrastructure Limited (2018-TIOL-22-AAR-GST)**, has held that in light of the Notification No. 13/2017- Central Tax (Rate), the applicant would be liable to pay tax in respect of the services received from Municipal authorities and therefore the question in the said case for which advance ruling is sought shall be entertained. In the said ruling, authority of advance ruling has evaluated who can make an advance ruling application. However, in the said ruling, it is nowhere stated that the recipient cannot seek an advance ruling.

(d) Rajasthan Authority for Advance Ruling in the case of **M/s Umax Packaging (2018-TIOL-321-AAR-GST)**, has held that in case of 'Bill-to ship to' model the supplier can charge IGST from the recipient (bill to party) against which the recipient is eligible to claim Input tax credit.

14. In view of the above rulings pronounced by advance ruling authorities, Applicant wish to submit that an applicant being the recipient of goods or services can seek an advance ruling under question (e) of Section 97(2) of CGST Act, 2017 i.e. determination of liability to pay tax on goods or services or both.



15. Therefore, Applicant humbly request the honorable authority of advance ruling to accept our application in light of the above submissions.

Questions for which Advance ruling is sought in the present application:

1. Applicant wishes to seek advance ruling in terms of Section 97(2)(e) of Central Goods and Services Tax Act 2017, "Whether the supplier is to charge Integrated Tax on supply of leased circuit facility to the Applicant, where the leased circuit is installed in more than one State or Union territory and the contract or agreement doesn't specifically provide the proportion of service provided in each state?"

2. Applicant also wishes to seek advance ruling in terms of Section 97(2)(d) of CGST Act 2017, "If the answer to the above question is affirmative, can the Applicant avail Input Tax Credit of the tax charged by the supplier of leased circuit facility?"

04. CONTENTION AND OBJECTIONS TO ADMISSION OF THE APPLICATION- AS PER THE CONCERNED OFFICER

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

The dealer Telstra Telecommunication Pvt Ltd. GSTN 27AADCT2652D1ZK, made an online application for Advance ruling on GSTN portal.

1. Question(s) on which Advance Ruling is required

A. Whether in the facts and circumstances in the case of supply involving leased circuit services wherein a pan India contract for supply of such services is entered into without any State wise break up for the supply it would be in order for the supplier of such services to charge Integrated Tax (under IGST Act) pursuant to the Explanation to Section 12(11)(d) which provides that place of supply, where the leased circuit is installed in more than one State and the value for service cannot be determined in absence of a contract, shall be on such other basis as prescribed i.e. the same would be the location of recipient of service,

B. In a case where the location of the service provider on pan India basis is Delhi and that of the recipient is Mumbai whether in the facts and circumstances, it would be **integrated tax** that would be chargeable since no rules have been prescribed pursuant to Sec 12(11)(d) as aforesaid and therefore whether it would be in order for the recipient to take credit of such Intergraded tax since the said services are used in the course or furtherance of business namely provision of last mile connectivity services to the recipient of services,

In respect of proposition (b) section 95(a) of MGST Act 2017, *may be referred and is as follows*

Section-95 (a). In this chapter, unless the context otherwise requires,

a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section(1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

Thus it is crystal clear from plain reading of above section that only supplier can apply for advance ruling in relation to the Supply of goods or services or both being undertaken or proposed to be undertaken by applicant. Hence recipient can not apply for advance being devoid of legal provision. Hence proposition (b) not maintainable before AAR

Alternative Submission is as follows

In respect of question A the levy and collection is governed by section 5 of IGST Act. The section 12 provides for place of supply of services where location of supplier and recipient is in India

Section 12 of IGST Act,

12. Place of supply of services where location of supplier and recipient is in India.

(1) The provisions of this section shall apply to determine the place of supplier of services where the location of supplier of services and the location of the recipient of services is in India.



(2) The place of supply of **services, except the services specified** in sub-sections (3) to (14),-

1. **made to a registered person** shall be the location of such person;
2. made to any person other than a registered person shall be, -
 - (i) the location of the recipient where the address on record exists; and
 - (ii) the location of the supplier of services in other cases.

(3) The place of supply of services,

1. directly in relation to an immovable property, including services provided by architects, interior decorators, **surveyors, engineers and other related experts** or estate agents, any service provided by: way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
2. by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by **whatever name called**, and including a house boat or any other vessel; or
3. by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
4. any services ancillary to the services referred to in clauses. (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be; is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation.- Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be **treated as made** in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(4) The place of supply of **restaurant and catering services, personal grooming, fitness, beauty treatment, health service** including cosmetic and plastic surgery shall be the location where the services. **are actually performed.**

(5) The place of supply of services in relation to training and performance appraisal to, -

1. a registered person, shall be the location of such person;
2. a person other than a registered person, shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

(7) The place of supply of services provided by way of, --

1. Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
2. services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,

- (i) to a registered person, shall be the location of such person;
- ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient:

Explanation. Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of services by way of transportation of goods, including by mail or courier to,

1. a registered person, shall be the location of such person;
2. a person other than a registered person, shall be the location at which such goods are handed over for their transportation,

(9) The place of supply of passenger transportation service to -



1. a registered person, shall be the location of such person;
2. a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Explanation. For the purposes of this sub-section, the return journey shall be **treated as a separate journey**, even if the right to passage for onward and return journey is issued at the same time.

(10) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,

1. in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

2. in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of **services**;

3. in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, moms

(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or

(ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold;

4. in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.- Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services,

(13) The place of supply of insurance services shall,

1. to a registered person, be the location of such person;
2. to a person other than a registered person; be the location of the recipient of services on the records of the supplier of services

(14) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or 'Union territories identified in the contractor agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in



terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

13. Place or supply of services where location of supplier or location of recipient is outside India.

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:

1. services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services: Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

2. Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as DEN each of the respective States or Union territories and the value of such supplies specific to each state or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

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

1. services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
2. intermediary services;
3. services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.--- For the purposes of this sub-section, the expression,

1. "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
2. "banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;



3. "financial institution" shall have the same meaning as assigned to it in clause (c) of section 45 of the Reserve Bank of India Act, 1934;
4. "non-banking financial company" means,
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may with the previous approval of the Central Government and by notification in the Official Gazette, specify

(9) The place of supply of services of transportation of goods, other than by way of mail or to be the place of destination of such goods,

(10) The place of supply in respect of **passenger transportation services** shall be the place where the passenger embarks on the conveyance for a continuous journey

(11) The place of supply of services provided on board a conveyance during the course of a **passenger transport operation**, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database **access or retrieval services** shall be the location of the recipient of services.

Explanation.- For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non contradictory conditions are satisfied, namely:

1. the location of address presented by the recipient of services through internet is in the **taxable Territory**,
2. the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
3. the billing address of the recipient of services is in the taxable territory;
4. the internet protocol address of the device used by the recipient of services is in the taxable territory;
5. the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
6. The country code of the subscriber identity module card used by the recipient of services is of taxable territory;
7. the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

in this case the IGST to be levied as per section 5 of IGST Act and Nature of supply will be determine by section 7 of IGST Act and the place supply of services will determined by section 12 and value will be determined under Section 15 of CGST Act.

1. The section 12 (11)(d) and Explanation inserted there in is to be interpreted as

The Supreme court in Sundaram Pillal v. V.R. Pattabiraman 94 (AIR 1985 5C 502.) (observed as **under:**

The object of an Explanation to a statutory provision is

- a) To explain the meaning and intendment of the Act itself;
- b) Where there is any obscurity or vagueness in the main enactment to clarify the same make it consistent with the dominant object which it seems to sub serve;
- c) to provide an additional support to the dominant object of the Act in order to mak meaningful and purposeful;
- d) An Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the explanation in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment; and
- e) It cannot however take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hinderance in the interpretation of the same.

Thus explanation to the section of enactment does not acts as charging or levy section it only clarifies meaning of enactment.



2. In case of leased circuit is installed in more than one State and the value for service cannot be determined in absence of a contract the reliance can be made on following judgment. The interpretation of taxing statute is to be made harmoniously so as to make statute workable. The reliance can be made on following judgment.

Machinery provisions:- Provisions for charge of interest on delayed payment have been added for tightening up the machinery for collection of tax and that as a deterrent measure so that the dealers may not evade or delay the payment of due tax. These are necessarily machinery provisions. Therefore, if more than one construction of such a provision is possible then that construction which preserves its workability and efficacy is to be preferred to one which would render it otiose or sterile⁶⁵. (State of T.N, V, M.K. Kandaswami, (1975) 36 STC 191 (SC) followed in Kingsway & Co. v. C.T.O., (1990) 76 STC 119 (WBTT).

3: Section 5 of IGST Act which is charging section needs to be construed strictly -

taxing statute indisputably is to be strictly construed. See 1. Srinivasa Rao v. Govt. of Andhra Pradesh & Another-2006(13) SCALE 27). It is, however, also well-settled that the machinery provisions for calculating the tax or the procedure for its calculation are to be construed by ordinary rule of construction. Whereas a liability has been imposed on a dealer by the charging section, it is well-settled that the court would construe the statute in such a manner so as to make the machinery workable:

4. In Case of *M/s Mabini Patram Private Ltd vs Union of India & others* on 23 February, 2007 Supreme court held that in absence of provisions in rules the machinery provisions of local Act can be resorted to (STR110SC)

5. The alternative submission of dealer regarding residual clause can be referred to determine the place of supply in case where vendor have leased circuit installed in multiple state and there is no provision in the agreement or contract to determine the value of service attributable to each state, the place of supply as per section 12 (2) shall be location of registered person.

Hence levy of GST under section 5 of IGST Act in case supply involving lease services, Circuit services wherein a pan India contract for supply of such services is entered into without any State wise break up for the supply it would be just and proper for the supplier of such services to charge Integrated Tax (under GST Act) pursuant to the Explanation to section 12(11)(d) which provides that place of supply where the leased circuit is installed in more than one state and the value for service cannot be determined in absence of a contract shall be on value as per section 15 of CGST Act and on prorate basis as prescribed i.e. the same would be the location of recipient of service.

In respect of proposition (b) if answer to proposition (a) is affirmative then it would be just and proper for recipient to take credit of GST since the said services are used in the course of furtherance of business namely provision of last mile connectivity services to the recipient of services.

04. HEARING

The case was taken up for preliminary hearing on 11.12.2018 with respect to admission or rejection of the application when Sh. Harish Bindumadhavan, Advocate along with Sh. Sagar Shah, Manager, and Sh. Aakash Sarda, C.A. appeared and made oral submissions for admission of their ARA application. They were informed that their question would have to be reframed to enable their application to be admitted which they agreed to. They have requested for 15 days time to reframe their questions. Jurisdictional Officer Sh. Rajesh Jadhav, Dy. Commissioner of S.T.(E-638), L.T.U., Unit-4, Mumbai appeared and made written submissions and also raised no objection for giving the applicant time to reframe their questions. The applicant has submitted reframed questions on 27.12.2018. Preliminary hearing for admission or rejection as requested by the applicant earlier as above is again held on 22.01.2019 wherein Sh. Harish Bindumadhavan, Advocate along with Sh. Sagar Shah, Manager, and Sh. Aakash Sarda, C.A. appeared and made oral & written submissions. Jurisdictional Officer Sh. Rajesh Jadhav, Dy. Commissioner of S.T. (E-638), L.T.U., Unit-4, Mumbai appeared and submitted written submissions and made objection that applicant being recipient is not competent to apply for ruling & hence ARA is not maintainable. We were heard from both the parties on the said issue.

05. OBSERVATIONS

We have gone through the facts of the case and the written submissions made by both, the applicant and the departmental authority. We find the relevant provision of Section 95, Section 97 and Section 98 of the GST Act. As per section 95, the term 'advance ruling' means a decision provided by this authority to the 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. For the sake of better understanding Section 97 is reproduced as below:

Section 97:

- (1) an applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- (2) 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;
- (3) whether applicant is required to be registered;
- (4) 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.



Before we decide the question raised in this application it is essential that it be first determined whether or not the activities undertaken by the applicant pertains to matters or questions specified in Section 97(2). Applicant has raised following question:

1. Applicant wishes to seek advance ruling in terms of Section 97(2)(e) of Central Goods and Services Tax Act 2017, "Whether the supplier is to charge Integrated Tax on supply of leased circuit facility to the Applicant, where the leased circuit is installed in more than one State or Union territory and the contract or agreement doesn't specifically provide the proportion of service provided in each state?"
2. Applicant also wishes to seek advance ruling in terms of Section 97(2)(d) of CGST Act 2017, "If the answer to the above question is affirmative, can the Applicant avail Input Tax Credit of the tax charged by the supplier of leased circuit facility?"

We find from the statement of facts pertaining to first question "Whether the supplier is to charge Integrated Tax on supply of leased circuit facility to the Applicant, where the leased circuit is installed in more than one State or Union territory and the contract or agreement doesn't specifically provide the proportion of service provided in each state?"

From the perusal of transaction as discussed above in details in their contention, it is clear that applicant is not supplier of services. He is recipient of services from their supplier who leased circuit facility to the applicant and as such by virtue of section 95 is not an applicant who can obtain advance ruling unless the recipient is paying the taxes under reverse charge mechanism on the transaction of receipt of supply. In the present case applicant is recipient of services and he has not a paying the taxes under reverse charge mechanism on the impugned transaction in GST ACT. Hence, we find that the applicant has not satisfied the conditions of section 95 of CGST Act.

With respect to question No. 2 above, we clearly find that the question (1) is not on matters or questions specified in Section 97(2) of the Act and as such is inadmissible under section 97(2) of the Act.

For above discussion, in our view, present application seeking ruling on questions stated hereinabove is not maintainable and liable for rejection.

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- 82/2018-19/B- 12 Mumbai, dt. 23.1.2019

For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is rejected under the provisions of sub-section 2 of Section 98 of the CGST Act, 2017.




B. TIMOTHY
(MEMBER)


B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

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, Churchgate Mumbai
5. Joint commissioner of State tax, Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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.