

**KERALA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX DEPARTMENT
TAX TOWER, THIRUVANANTHAPURAM**

BEFORE THE AUTHORITY OF: *Shri. S. Anil Kumar IRS &
: Shri. B.S. Thyagarajababu B.Sc, LL.M*

Legal Name of the applicant	M/s. Sutherland Mortgage Services Inc.
GSTIN	32AARCS6969G1ZQ
Address	5 th Floor, 1, Technopolis, Cochin Special Economic Zone, Kakkanad, Kochi, Ernakulam - 682037.
Advance Ruling sought for	Whether supply of services by India Branch of M/s.Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the inter company agreement with M/s. Sutherland Mortgage Services Inc. USA.
Date of Personal Hearing	12.04.2019
Authorized Representative	Mr. Sivarajan, PWC.

ADVANCE RULING No. KER/ 32 /2019 Dt.24.05.2019

M/s. Sutherland Mortgage Service Inc., USA has branch offices in India at Cochin, Mumbai and Chennai. The applicant is engaged in the business of providing information technology enables services such as mortgage orientation, primary servicing, special servicing, cash management and analytics and reporting. The Head Office prevented outsourcing of its work to any other third party. Therefore, M/s. Sutherland Mortgage Services Inc. India is entered into an inter-company agreement with the M/s. Sutherland Mortgage Services Inc. USA for providing services to the customers located outside India. The inter-company agreement is entered only for the purpose of transfer pricing regulation as the branch has no legal separate entity. M/s. Sutherland Mortgage Services Inc. USA has also entered into agreement with customers outside India for providing the services from USA and India branch. M/s. Sutherland Mortgage Services Inc. USA is reimbursing the branch at India for the costs incurred to perform the services and branch issues commercial invoice to Head Office at USA. The applicant has pointed out that M/s. Sutherland Mortgage Services Inc. India Branch has provided the services to the customers located outside India and not to Head Office and

therefore services would qualify as export of services, which is considered as zero-rated supply in terms of Section 16 of the IGST Act. Hence the applicant requested advance ruling on the following:

Whether supply of services by India Branch of M/s.Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the inter company agreement with M/s. Sutherland Mortgage Services Inc. USA.

The authorized representative of the company was heard. It is pointed out that the contract is entered by Sutherland Mortgage Services Inc. USA with the customers located outside India and the Indian Branch provides services directly to customers located in USA from India. The recipient of service rendered by India Branch is customer of Head Office in USA. The scope of work between head office in USA and customers in USA specifically provides that Sutherland Mortgage Services Inc. India branch office is the service provider. The invoice raised by the Sutherland Mortgage Services Inc. USA to their customers also clearly depicts the bifurcation of service provided by the head office and off-site location at India. As the Head Office and Branch office are having same legal entity, the supplier in the transaction is branch office. As per Section 2(71) of the CGST Act, location of the supplier of service is where a supply is made from a place of business for which the registration has been obtained, the location of such place of business and where a supply is made from more than one establishment, where the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply. Accordingly, in this case, the location of the supplier is the place for which registration has been obtained. The perusal of scope of work and the corresponding invoices make it clear that the services are actually provided from Sutherland Mortgage Services Inc. India branch to the customers in USA and not to the head office located in USA. The service provided by Sutherland Mortgage Services Inc. India branch cannot be reviewed by Sutherland Mortgage Services Inc., USA before the same is delivered to the customers. The services are directly delivered to the customers by Sutherland Mortgage Services Inc. India branch without any consolidation at Sutherland Mortgage Services Inc. USA. The perusal of the definition of recipient makes it clear that recipient is one who is liable to pay the consideration. In this case, the customers of Sutherland Mortgage Services Inc. are legally entitled to the service from Sutherland Mortgage

Services Inc. and are obliged to make the payment to Sutherland Mortgage Services Inc. based on the invoice for the service. The head office in USA reimburses the cost to perform such services to India branch. The consideration in foreign exchange is received by Sutherland Mortgage Services Inc. India branch based on the intra office invoice as per the inter company agreement.

As per GST Law, the service receiver is the person who is liable to make payment irrespective of the fact that whether or not he actually makes the payment or someone else make payments on its behalf. As per 2(6) of the IGST Act, for export of service, the supplier of service and the recipient of service shall not be merely establishments of a distinct person in accordance with Explanation I in section 8. Here two different units of the same entity from India and USA are rendering service to the customers. The provider and recipient of the service are therefore, not merely establishments of a distinct person. The petitioner satisfies the following conditions required for the concept of "export of service":

- (a) the supplier of service is located in India (Sutherland Mortgage Services Inc. India Branch)
- (b) The recipient of service is located outside India (customers of Sutherland Mortgage Services Inc. USA)
- (c) The place of supply of service is outside India (service provider is in India and the services are received in USA) and
- (d) The Indian Branch has received the money is foreign exchange
- (e) 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.

Therefore, the supply of services made by Sutherland Mortgage Services Inc. India branch office to its head office outside India would be treated as "export of service" and all the provisions relating to zero rated supply would be applicable.

The matter was examined in detail. The applicant is providing Business Support Service to their Head Office at USA. This is done on the basis of the inter-company service agreement executed between branch office in India and Head Office at USA. The question raised in the application is whether the supply of services by India Branch to the customers located outside India would be treated as 'export of service' under the provisions of the IGST Act.

The definition of "export of services" as per Section 2(6) of IGST Act, 2017 is as follows;

"2(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;"

Thus, one of the important requirements of supply of any service to be treated as 'export of service' is that the place of supply of service must be outside India. The provisions for determination of 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 are contained in Section 13 of the IGST Act, 2017. Section 16 of the IGST Act, 2017 provides for zero rating of certain supplies namely; exports and supplies made to special economic zone units or a special economic developer and the manner of zero rating.

Thus, the entire issue is intrinsically related to determination of 'place of supply' of service by the applicant. In this case the supplier of services is located in India and the recipient of the services is located outside India. As per Sec.13 of IGST Act, the liability to pay tax is dependent upon the 'place of supply'.

Section 97(2) of the Central Goods and Services Tax Act, 2017 and Kerala Goods and Services Tax Act, 2017 empowers the Advance Ruling Authority to decide the issues, which are as follows :-

- (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.

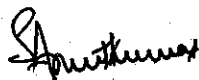
From the statements and arguments of the applicant, it is evident that the question raised is whether the supply made by the applicant would qualify as export of service as defined in

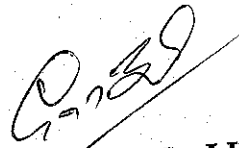
Section 2(6) of the IGST Act, 2017. Therefore, the question essentially involves the determination of place of supply which is not included in Section 97 (2) of the CGST Act, 2017 as a question on which advance ruling can be sought.

In view of the observations stated above, the following rulings are issued:

Whether supply of services by India Branch of M/s.Sutherland Mortgage Services Inc. USA to the customers located outside India shall liable to GST in the light of the inter company agreement with M/s. Sutherland Mortgage Service Inc. USA.

This authority has been constituted in exercise of the powers conferred by section 96 of the Kerala Goods and Services Tax Act, 2017, which Act extends to the whole of the state of Kerala. This authority is a creature of statute and has to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section 97(2) of the Acts, this authority is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issues. The jurisdiction of this authority does not extend to the questions on determination of 'place of supply'.


S.Anil Kumar, IRS
Additional Commissioner of Central Tax
Member


B.S.Thyagarajababu, B.Sc, LL.M
Joint Commissioner of State Tax
Member

To
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