

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

**GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010.**

(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	27AABCT2018B1ZY
Legal Name of Applicant	Cummins Technologies India Private Limited
Registered Address/Address provided while obtaining user id	Cummins India Office Campus, Tower A, 2nd, 4th & 8th floor, Survey No. 21, Balewadi, Pune - 411045
Details of application	GST-ARA, Application No. 133 Dated 12.03.2019
Concerned officer	Deputy Commissioner CGST, Division-V, Pune - II,
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	Various support services
A Category	Service Provision,
B Description (in brief)	The Applicant is <i>inter alia</i> engaged in providing various support services to its domestic and overseas group companies
Issue/s on which advance ruling required	(i) Classification of goods and/or services or both (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 **Cummins Technologies India Private Limited**, the applicant, seeking an advance ruling in respect of the following question.

**Whether the liability to pay tax on the subject supplies can be assessed based on taxability as accorded to Zero rated supply'?**

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 any 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, the expression 'GST Act' would mean CGST Act and MGST Act.

**2. 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 QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED**

1. This Application is being preferred on behalf of Cummins Technologies India Private Limited ("**CTIPL/the Applicant**"), a company incorporated in India under the provisions of the Companies Act, 1956 having its registered office at Cummins India Office Campus, Tower A, 2nd, 4th & 8th floor, Survey No. 21, Balewadi, Pune - 411045
2. The Applicant is a group company of Cummins Inc. ("**Cummins**") situated in Columbus, Indiana and as such is engaged in manufacture and sale of products and provide services relating to turbo technologies, emission solutions, etc. The Applicant is duly registered under the Central Goods and Service Tax Act, 2017 ("**CGST Act**") and Maharashtra Goods and Service Tax Act, 2017 ("**MGST Act**") bearing GSTIN 27AABCT2018BIZY.
3. Apart from the above stated activities, the Applicant also possesses **necessary manpower and expertise** at the best competitive cost to provide various support services to its group companies in India **as well as overseas**.
4. Accordingly, the Applicant has entered into Agreements with various group companies ('**group company**') for providing its services on principal-to-principal basis. These services are provided to group company and billed out on the basis of cost of providing services plus pre-agreed mark-up for each of the service to be provided. Sample copies of Agreement which stipulate the arrangement for providing **these services are enclosed as Exhibit A1, A2 and A3 respectively**.
5. It is submitted that these services *inter alia* enable the group company to improve its product and service offerings to its customer as well as efficiently develop procurement cycle from vendor. As such, the scope of services to be provided by the Applicant is limited to undertaking the activities for the group company alone which includes but are not limited to warranty analysis, finance support, quality management system, human resources, etc. and scope of which is explained at length in the table below:

Sr. No.	SERVICE TYPE	DESCRIPTION IN BRIEF
1	Accounts and finance support	<ul style="list-style-type: none"> <li>- Collating business information relating to <b>sales, sales forecasts, expenses</b>, etc. and preparation of reports and/or <b>statements</b> for management reporting</li> <li>- Reconciliation various financial records such as balance sheet reconciliations, tracking of material price variance etc. of the group company</li> <li>- Resolving the issues in accounts payable arising due to failure of three-way match in the accounting system, this <b>exercise ensures</b> that actual procurements and its invoice corresponds to price, quantity, and <b>other terms and</b> conditions of the Purchase order</li> <li>- Collating relevant data and information required for costing and pricing</li> <li>- Various compliance measures - e.g. SOX compliances which is aimed to protect shareholders and the general public from accounting errors and fraudulent practices in <b>enterprises, and to improve the accuracy of corporate disclosures</b></li> </ul>

2	Analysis supports	<ul style="list-style-type: none"> <li>- Building advanced statistical models and dashboards to improve current product reliability, this activity essentially involves analyzing trends in performance of the product to predict and improve its reliability</li> <li>- Based on predictions relating to performance of the product, the Applicant prepares maintenance modules inter alia scheduling replacement of parts, periodic maintenance, cleaning, over-hauling, etc for the engines sold by the group company</li> </ul>
3	HMLD support	<ul style="list-style-type: none"> <li>- Analyzing statistical data relating to warranty, product failure rate, time lag to service, etc. this information enables the group company to minimize the costs relating to <b>warranty</b></li> <li>- Preparation of reports on failure rate prediction, supplier's <b>warranty</b>, gap charts. This information enables group company to improvise in efficiently providing <b>warranty services</b></li> </ul>
4	HR support	<ul style="list-style-type: none"> <li>- Undertaking HR functions relating to recruitment, employee remunerations and compensations, employment policy benefits etc. for group company</li> <li>- The Applicant provides <b>relevant</b> information of the prospective employee, however the actual decisions relating to recruitment are taken by the group company by itself</li> </ul>
5	IT support	<ul style="list-style-type: none"> <li>- The Applicant undertakes to manage information technology infrastructure <b>and address day-to-day issues</b> faced by employees of group company using the said infrastructure. The support is provided when the employee approaches its respective group company and the group company approaches the Applicant to address the query so <b>raised</b></li> <li>- The Applicant provides services and assistance in relation to customization of ERP reports to suit the requirements of the group company</li> <li>- It also provides assistance in implementing ERP, setting up entire information technology setup wherever the group company is setting up new units/manufacturing facility/ <b>warehouse/etc.</b></li> <li>- Providing infrastructure support to engineering teams to resolve <i>server/network</i> related <b>issues</b></li> <li>- Supporting and maintaining <b>QSOL databases</b></li> </ul>
6	Operations support	<ul style="list-style-type: none"> <li>- The Applicant assists and prepares strategic plans for manufacturing schedules <b>and appropriate supply chain planning to suit the same, these strategies are aimed at</b> supporting the group company to effectively undertake manufacturing operation</li> <li>- It also assists group company to prepare flow design for manufacture/procurement of engineered products</li> <li>- These services also involve detailing plant layout design based on the requirement of group company</li> </ul>
7	Pricing support	<ul style="list-style-type: none"> <li>- These services involve calculating prices of material and <b>service</b> required by group company and updating these in the price list</li> <li>- The Applicant also <b>undertakes to collate and makes</b> available relevant information to enable the group <b>company</b> determine transfer pricing</li> <li>- It undertakes to determine price of a part newly <b>released by</b> group company and addressing queries raised by customer on pricing</li> <li>- The Applicant also engages itself for group company in getting special prices approved from higher management of group company</li> </ul>
8	Purchasing support	<ul style="list-style-type: none"> <li>- The Applicant undertakes detailed financial risk analysis of suppliers of group company, this analysis assists group <b>company to minimize the risk in procurement of</b> material/services</li> <li>- It also analyses group companies' trend in buying, price <b>variation</b> of commodities and recommends cost reduction <b>measures</b></li> <li>- It also monitors prices of 150 commodities across different <b>markets to identify</b> potential procurement opportunities <b>at lower costs</b></li> <li>- The Applicant also updates the records of group company relating to costs of procurement, supplier database</li> </ul>
9	Quality support	<ul style="list-style-type: none"> <li>- The Applicant analyses reliability of its product, <b>reasons for</b> failure and updates relevant information with the group <b>company to enable its service engineer to address any</b> issues relating to the product effectively</li> <li>- It also extracts periodical reports to evaluate performance of the product and analyses if it necessitates any peculiar measures for group company to perform its obligation under warranty clauses</li> <li>- The Applicant also analyzes discrepancies reported by customer relating to shipments e.g. short fall in quantity, error in <b>invoice, etc. and assists the group company to address the same</b></li> </ul>



10	Sales & Marketing	<ul style="list-style-type: none"> <li>- The Applicant prepares product sales training module which <b>can be referred by the sales personnel</b> of the group company</li> <li>- The service also involves configuring tool to quote product price and accordingly prepare communication strategy</li> <li>- <b>It also undertakes market research</b> for identification of current product &amp; new product opportunities,</li> <li>- It also calculates discounts to be offered by group company to its customers</li> <li>- In case of introduction of new product, it aids in preparation of product introduction plans</li> <li>- It integrally assists the sales team of group company to co-ordinate and continuously improve demand planning</li> <li>- <b>It also undertakes to manage integration of software</b> relating to sales e.g. sales force</li> </ul>
11	Should cost support/ Procurement cost analysis	<ul style="list-style-type: none"> <li>- <b>These services involve</b> analysis of expenses/estimating costs that supplier may have incurred (such as material cost, labour, overheads etc.) to supply a given product or service required by group company</li> <li>- This analysis aids group company to arrive at an appropriate figure and <b>also serves as a reference</b> during price negotiations</li> </ul>
12	Supply chain support	<ul style="list-style-type: none"> <li>- These services involve undertaking material procurement planning for plants based on group company's requirement</li> <li>- It also observes inventory stocks of group company at various locations and highlights potential <b>alternative stock elsewhere to effectively manage logistics and integrates other activities.</b></li> <li>- <b>It also manages material requirement plan and sharing material requirement schedules with vendors</b></li> <li>- The Applicant works with central logistics team to identify <b>opportunities to reduce logistics costs and to timely</b> implement project to reduce logistics cost</li> <li>- It also analyses opportunities in <b>the market to provide best</b> air freight solution</li> <li>- The Applicant also <b>forecasts and communicates potential vulnerabilities</b> (price increases from suppliers) to relevant stake holder of group company</li> </ul>
13	Support to customer	<ul style="list-style-type: none"> <li>- <b>Addressing customer queries</b> telephonically by analyzing the <b>cause &amp; directing them to appropriate</b> personnel/department for further action</li> </ul>



6. The services referred above ("subject supply"), being provided by the Applicant for consideration, partake the character of 'supply' as defined under Section 7 of the CGST Act. Accordingly, whenever these services are provided by the Applicant to group company in India, the Applicant discharges its liability to pay Integrated tax ('IGST') or Central and State tax ('CGST and SGST') as may be applicable.
7. When these services are provided by the Applicant to an overseas group company, the transaction merits analysis *qua* 'export of service' to determine if the liability to pay tax on these supplies can be assessed based on taxability as accorded to 'Zero rated supply'
8. In this regard submissions enumerated below may please be considered relevant for the present Advance Ruling.
- 3a. STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED**
- 1. ISSUE FOR DETERMINATION**
- 1.1 The question/issue before Your Honour for determination is:

*Whether the liability to pay tax on the subject supplies can be assessed based on taxability as accorded to Zero rated supply'?*

2. SUBMISSIONS ON INTERPRETATION OF LAW IN THE PROPOSED FACT SITUATION

SUBJECT SUPPLY QUALIFY AS 'EXPORT OF SERVICE' AND MERITS TAXABILITY ACCORDED TO 'ZERO RATED SUPPLY

2.1 The term 'Zero rated supply' is explained under Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') to include export of goods, export of services, and supply of goods and/or services to SEZ. It is submitted that the subject supply being made to an overseas group company and is essentially in the nature of a 'service' it merits analysis *qua* 'export of service'.

2.2 The term Export of Service is defined under Section 2(6) of the IGST Act and it provides below summarized conditions for any transaction to qualify as export of service:

- i. Supplier of service should be in India;
- ii. Recipient of service should be outside India;
- iii. Consideration for such services must be received in convertible foreign exchange;
- iv. Supplier and recipient should not be establishment of distinct person; and
- v. Place of supply of service should be outside India.

2.3 The Applicant submits that since it is a supplier located in India and the supplies are being made to its group companies which are independent legal entities and not merely establishment of distinct person, also the consideration for subject supply is to be received by the Applicant in convertible foreign exchange, the subject supply qualifies conditions referred at serial number (i) to (iv) above. In such a case, the Applicant refers to the statutory framework relating to determination of 'location of recipient' and its nexus with fulfilment of condition at serial number (v) above.

**Determination of 'Location of recipient'**

2.4 The term 'recipient' and 'location of recipient' are defined under section 2(93) and 2(70) of the Central Goods and Service Tax Act, 2017 ('CGST Act') respectively, relevant portion of which is reproduced below:

*Section 2 (93) "recipient" of supply of goods or services or both, means - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*

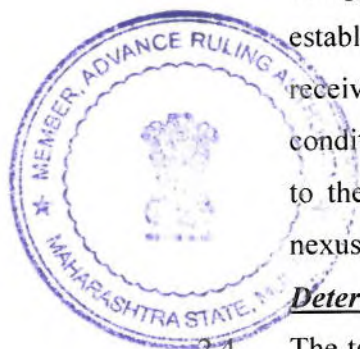
*Section 2 (70) "location of the recipient of services" means, -*

*(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;*

*(b) where a supply is received at 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 received at more than one establishment, whether the gharele business or fixed establishment, the location of the establishment most directly concerned with the rest of the supply; and*

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



2.5 On reading the above referred definitions in conjunction with each other, the Applicant submits that where a supply is made for a consideration then the person responsible to make the payment of consideration is to be treated as 'recipient', and the registered place of business of such recipient is to be treated as the 'location of recipient'. It further provides that if the services are not received at a registered place of business, recipient's usual place of residence shall be treated as the 'location of recipient'.

2.6 In view of the above where overseas group company is responsible for making payment of consideration to the Applicant, it qualifies as recipient. Further, since such group company is not registered under Goods and Service Tax (GST) in India, the usual place of residence, i.e. respective location where these group companies are incorporated, qualify as the 'locations of recipient'.

**Subject supply is classifiable as 'export of service'**

2.7 Based on the fact that location of recipient in the subject supply is determined to be outside India, place of supply thereof also residually occurs outside India in view of Section 13(2) of the IGST Act, inasmuch as none of the services referred under sub-section (3) to sub-section (13) of Section 13 cover the subject supply in its scope. We have broadly summarized below the services referred in each of the sub-section (3) to Sub-section (13) below:

SUB-SECTION	SERVICE REFERRED
2	Any service that is not covered under sub-section (3) to Sub-section (13)
3	- Performance based services where goods are required to be made physically available, -- Services where physical presence of recipient/person representing recipient is required
4	Services supplied, directly in relation to an immovable property
5	Services by way of admission to or organization of an event
6	Services covered under sub-section (3), (4) and (5) when these are supplied at more than one location, including a location in the taxable territory
7	Services covered under sub-section (3), (4) and (5) when these are supplied in more than one state or union territory
8	- Services of banking company - Services of intermediary - Hiring of means of transport
9	Transportation of goods
10	Passenger transportation services
11	Services provided on board a conveyance
12	Online information and database access or retrieval services
13	Services as to be declared by government for which the place of supply would be deemed to be the location of effective enjoyment or use of such service

A copy of Section 13 is enclosed as Exhibit - B for ease of reference.

2.8 In view of the above, the Applicant submits that subject supply also fulfills the condition referred at serial number (v) paragraph 2.2 above to qualifies as 'export of service' and accordingly merits treatment and benefits as a 'zero rated supply'.



2.9 Having said the above, we note that subject supply relating to 'supply chain support' & 'support to customer', where the Applicant potentially may or may not interact with vendors of the group company, the possibility to overstep the thin line of distinction between the stated services as 'export' vis-à-vis 'intermediary' cannot be ruled out.

2.10 Any attempt to treat the subject transaction as intermediary would mean that it would cease to qualify as an 'export of service and would not merit assessment as accorded in zero rated supply. Thus, without prejudice to the submissions in forgoing paragraphs, the Applicant further seeks clarification that 'supply chain support' & 'support to customer' do not merit classification as intermediary service to re-affirm applicability of Zero rated taxability based on the submissions herein below

**SUBJECT SUPPLY DO NOT MERIT CLASSIFICATION AS 'INTERMEDIARY SERVICES'**

2.11 The term intermediary referred under Section 13(8)(b) is defined under Section 2(13) of the IGST Act and the same is reproduced below for easy reference:

*"(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*

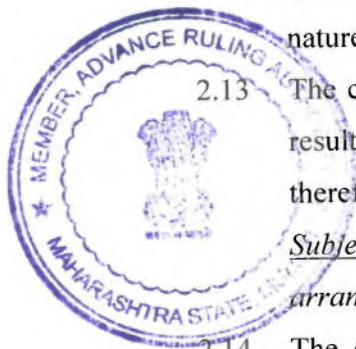
2.12 It is submitted on a scrutiny of the referred definition, that a broker or agent or any other person partakes the character of an intermediary if: vi. He *arranges or facilitates* supply between *two or more persons*; and vii. The activities undertaken by him *are not* in the nature of a *supply on his own account*.

2.13 The conditions as referred above operate in conjunction and breach of either condition results in exclusion from the scope of the term 'intermediary'. These conditions are therefore analyzed below *qua* subject supply to be made by the Applicant.

*Subject supply to be made by the Applicant is not in the nature of facilitation arrangement of supply between group company and any other/third party*

2.14 The Applicant submits that role of an intermediary is stipulated to be of facilitation or arrangement of a supply between two or more persons. The term facilitation or arrangement is not defined under IGST Act, and therefore we refer to meaning of these terms as understood in common parlance. Reference is thus made to **the Black's Law Dictionary, Ninth Edition** wherein the term 'facilitation' is explained to mean *'The act or an instance of aiding or helping'*.

2.15 Reference is also drawn from **the Oxford Advanced Learners Dictionary, Seventh Edition** where in the term arrangement is explained to mean *'a plan or preparation that you make so that something can happen'*. The dictionary further explains the term facilitation to mean, *'to make an action or a process possible or easier'*.



- 2.16 Based on the meaning of the said terms assigned in common parlance and its usage in the definition of intermediary, it appears that an intermediary performs as a catalyst to aid or arrange or to make possible a transaction between two parties, and there exist no independent supply on account of the intermediary itself.
- 2.17 However, in the present transactions, the various services to be provided are independent of any supply that the group company may or may not otherwise 'receive' or 'provide'. On the other hand, the activities performed by the Applicant constitute an independent supply by itself within the definition of 'Supply' as provided under Section 7 of the CGST Act, in as much as there exists a transaction between the Applicant and group company for various independent support functions in the course of business, on payment of consideration. It is evident that consideration for Applicant's services is independent from any transaction that the group company may undertake. Thus, owing to the independence of the activities to be undertaken by the Applicant irrespective of any other transaction between group company and its vendor or customer, subject supply is not in the nature of any facilitation or arrangement as necessitated by the definition of intermediary'. These activities to be undertaken by the Applicant while providing subject supply are therefore not in the nature of merely facilitating or arranging any supply.
- 2.18 Independent existence of the Applicant's obligation can further be substantial as by relevant clauses of the agreement which clearly state that the Applicant is not an agent of group company. We have reproduced one sample clause from the Applicant's agreement with one of its group company viz. Cummins Limited:

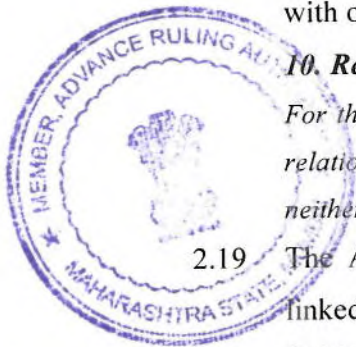
***10. Relationship of the Parties***

*For the purpose of this agreement, nothing herein shall be construed to place the parties in a relationship of partners, joint ventures, principal and agent, or employer and employee; and neither party shall have the power to obligate or bind the other in any manner whatsoever.*

- 2.19 The Applicant also submits that, remuneration of an intermediary is proportionately linked with the transaction between the parties which the intermediary arranges or facilitates. Such consideration may also become payable based on successful completion of transaction that the intermediary is mediating. However, in the present facts the remuneration of the Applicant is independent of any other transaction of group company. Relevant sample portion from the Applicants agreement with Cummins Limited (referred above) is reproduced below:

***10. Relationship of the Parties***

*...CTIPL acknowledges that it has freely and knowingly entered into this agreement for separate and sufficient consideration unrelated to any other engagement, relationship.*





*CTIPL acknowledges that any rights, benefits, or other terms and conditions of any such engagement relationship do not apply to and excluded from this Agreement.*

- 2.20 These contractual stipulations further fortify the position that scope of the Applicant's rights and duties are limited only to the transaction of providing subject supply and is completely independent of any other transaction or activity that the group company may undertake.
- 2.21 In view of the submissions made above, it is submitted that subject supply is not in the nature of facilitation or arrangement and therefore do not fulfill any of the criterion set forth by the definition of 'intermediary'. The subject supply therefore cannot be treated as intermediary services to invoke the provision of Section 13(8)(b) of the IGST Act.

*The position expounded above is supported by Judicial precedents*

- 2.22 Additionally, reference is drawn to the Advance Ruling provided in application preferred by **Godaddy India Web Services Pvt. Limited [2016 (46) STR 806 (A.A.R.)]** wherein it has been held that services provided by Godaddy India Web Services Pvt. Limited ("**Godaddy India**") to Godaddy.com LLC, USA ("**Godaddy USA**") are in the nature of business support service and not intermediary services. Relevant portion of the said Ruling is extracted below for easy reference:

*2. ... The Applicant is not authorized to enter into any contract or arrangement on behalf of GoDaddy US or which would bind it in any manner whatsoever. GoDaddy US will directly contract and render services to customers in India. It will directly engage relevant third party service providers in India such as marketing agencies and call centers... The only service to be performed by the Applicant is provided to GoDaddy US on a principal-to principal and arm's length basis*

*14. It has been ruled by us that in the present case, proposed service to be provided by the Applicant to GoDaddy US is business support service and not intermediary service in terms of Rule 2(f) of POPS. It is observed that said proposed service does not fall under any of the Rules of POPS but for Rule 3. Rule 3 of POPS inter alia envisages that the place of provision of a service shall be the location of the recipient of service.*

*15. In view of above, we rule as under; In the facts and circumstances of the case, the place of provision of business support service provided by the Applicant, is outside India in terms of Rule 3 of the Place of Provision of Service Rules, 2012*

- 2.23 Uniformity in the facts of the above ruling and the present matter is tabulated below:

FACTS OF THE RULING	FACTS OF THE PRESENT APPLICATION
Godaddy India would provide information, advice and support to the marketing team of GoDaddy US regarding various events taking place in India where advertisements can be <b>broadcasted</b>	The Applicant provides the analysis and other support services <b>necessary</b> for group company to ensure qualitative uniformity and standardization
The content of advertisement would be prepared by the marketing team of GoDaddy USA itself. Also, such advertisement would be directly placed on social media by GoDaddy USA	Group company would instruct the Applicant about scope of analysis and support services that it requires
Godaddy India will have no role to play with regard to appointment of the advertisement agency	The analysis and other support services would be utilized by group company



in India or payment of consideration to the advertisement agency by Godaddy USA	for deciding its business strategy, taking internal development measures etc. and the Applicant has no role to play in these activities
Godaddy India is not authorized to enter into any contract or arrangement on behalf of Godaddy USA or which would bind it in any manner whatsoever	The Applicant is not authorized to enter into any contract with any other/third party on behalf of group company
Godaddy India will not be engaged in arranging or facilitating provision of services by Godaddy USA to customers in India	Applicant is not engaged in facilitating any transaction between group company and its vendors/customers or any third party

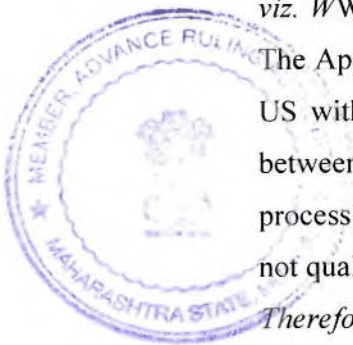
2.24 Given the similarity in the facts, ruling in the case of GoDaddy, India would squarely be applicable in the present facts. It may be noted that aforesaid Advance Ruling pertains to the statutory provisions of Service tax under the Finance Act, 1994 and rules made thereunder wherein the concept of 'intermediary' was included which was identical with the concept of intermediary as provided under IGST Act. It is submitted that, owing to identical nature of definition of 'intermediary' under erstwhile regime as well as GST regime, the logical analogy put forth in the above paragraph based on erstwhile statutory framework gain persuasive force to determine scope of 'intermediary' under GST regime.

2.25 Reliance is also placed on another ruling of Hon'ble Authority for Advance Ruling in the case of **Universal Services India Pvt. Ltd.** [2016 (42) S.T.R. 585 (A.A.R.)] wherein the Applicant was entrusted with the activity of payment processing by an overseas entity viz. WWD US who was engaged in providing web hosting services to Indian customers.

The Applicant was thus to collect the money on behalf of WWD US and pay it to WWD US without any markup and for this activity an earmarked consideration was agreed between the parties. While passing the ruling, the authorities observed that the payment processing activity is undertaken by the Applicant on its own account and thereby would not qualify as an 'intermediary' relevant portion of the said Ruling is extracted below:

*Therefore, it transpires that the main service provided by WWD US to the customers in India is domain name registration, web hosting services, etc. The Applicant is not at all concerned with respect to this service. However, service provided by the Applicant to WWD US is processing of payments, which is the main service. Further, the Applicant is providing this service to WWD US on his own account for a fee equal to the operating costs incurred by the Applicant plus mark-up of 13% on such costs...*

*... Further, the definition of "intermediary" as envisaged under Rule 2(f) of POPS does not include a person who provides the main service on his own account. In the present case, the Applicant is providing main service, i.e., "business support services" to WWD*



*US and on his own account. Therefore, the Applicant is not an "intermediary" and the service provided by him is not intermediary service.*

- 2.26 The ruling emphasizes on absence of any nexus between the services of Applicant therein and the services of its overseas counterpart to its customer to draw the conclusion that services of Applicant are not in the nature of intermediary. The ruling further notes that activities of Applicant qualify as a supply on its own account which further corroborates the conclusion derived by it
- 2.27 Drawing an analogy from the referred Ruling, the Applicant submits that since it has no dependence on the supplies to be made by the group company, services of Applicant are not in the nature of an intermediary which are also further corroborated by the fact that services of Applicant independently qualify as 'supply' on its own account. Therefore, services of Applicant cannot be treated as an intermediary, and such position of law is also well supported by the Judicial precedents of the erstwhile regime referred above which gain persuasive force in the instance application given the similarity of relevant facts.

**3. PRAYER**

**In view of the submissions made above, it is most humbly prayed that Hon'ble Authorities may kindly pass a ruling to clarify:**

*The subject supply is classifiable as a 'export of service in terms of Section 2 (6) of the IGST Act and the liability to pay tax on these supplies can be assessed based on taxability as accorded to Zero rated supply.'*

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

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

Application made by M/s Cummins Technologies India Pvt. Ltd. (hereinafter referred as "the Applicant") vide their letters dated 04.03.2019 is examined and it is noticed that the Applicant has sought clarification on various support services viz. Accounts and finance support service, HR support service, HMLD support service, IT support service, Operation support service, quality support service, purchasing support service, sales & marketing service etc. being provided by them for consideration to an overseas group company, the liability to pay tax on the subject supplies can be assessed based on taxability as accorded to 'Zero rated supply'.

3. The Applicant is a group company of M/s Cummins Inc. situated in Columbus, Indiana and as such is engaged in manufacture and sale of products and provide services relating to turbo technologies, emission solutions, etc. Apart from these, the Applicant possesses

necessary manpower and expertise at the best competitive cost to provide various support services as enumerated above to its group companies in India and abroad.

4. The Applicant submitted that they have entered into Agreements with various group companies for providing its services on principal-to-principal basis. These services are provided to group companies and billed out on the basis of cost of providing services plus pre-agreed mark-up for each of the service to be provided. The services referred above being provided by the Applicant for consideration, partake the character of 'supply' as defined under Section 7 of the CGST Act, 2017. Accordingly, whenever these services are provided by the Applicant to group companies in India, the Applicant discharges its liability to pay Integrated Tax or Central and State Tax as may be applicable. When these services are provided by the Applicant to an overseas group company, the transaction merits analysis qua 'export of service' to determine if the liability to pay tax on these supplies can be assessed based on taxability as accorded to 'Zero rated supply'.
5. The term 'Export of Service' is defined under Section 2(6) of the IGST Act, 2017 and it provides below summarized conditions for any transaction to qualify as export of service:  
*'(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;'*

To qualify the term "export of services", the services supplied by any taxpayer should fulfil the above mentioned conditions.
6. The applicant's submissions in Annexure II of their application dated 04.03.2019 in a nut-shell affirms that they fulfil all the conditions mentioned under Section 2(6) of the IGST Act, 2017 and requested that the Hon'ble Authorities may kindly pass a ruling to clarify the subject supply is classifiable as a 'export of service' in terms of Section 2(6) of the IGST Act, 2017 and liability to pay tax on these supplies can be assessed based on taxability as accorded to 'Zero rated supply'.
7. The legal provisions enumerated in the IGST Act, 2017 safeguards the interest of the taxpayers who intend to export their services. They are drafted in a fairly simple. The Applicant itself submitted that they fulfil all the required conditions of export of service and their services provided to their overseas group company are export of service. In



such a situation, the Applicant is not required to approach the Hon'ble Advance Ruling Authority. The applicant is neither a newly registered taxpayer nor they intend to supply these services to their overseas group companies for the first time. It is learnt that the applicant is regularly supplying these services to their overseas group companies and classifying these supply under 'Zero rated supply' category only. If the Applicant fulfil all the conditions laid under Section 2(6) of the IGST Act, 2017 and any other notification issued thereunder, they need not seek the ruling of the Hon'ble Authority.

8. Hence, in view of the above, the application filed by the applicant is appears to be not maintainable and is not required to be admitted, as the law is fairly clears in the concerned matter. They should be advised to follow the law enumerated in this regard in letter and spirit.

**04. HEARING**

Preliminary hearing in the matter was held on 02.04.2019. Sh. Vivek Bhaj, C.A. appeared and requested for admission of their application. Jurisdictional Officer Sh. B. K. Mishra, Suptt., Division-V, Pune also appeared and made written submissions

The application was admitted and called for final hearing on 07.05.2019. Sh. Rohit Jain, Advocate appeared, made oral and written submissions. Jurisdictional Officer Sh B. K. Mishra, Suptt., Division-V, Pune appeared.

**04. OBSERVATIONS**

- 4.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

4.2 The applicant has sought clarification in respect of various services rendered by them to their group company situated abroad, as to whether such services being supplied by them for consideration to an overseas group company, the liability to pay tax on the subject supplies can be assessed based on taxability as accorded to 'Zero rated supply'.

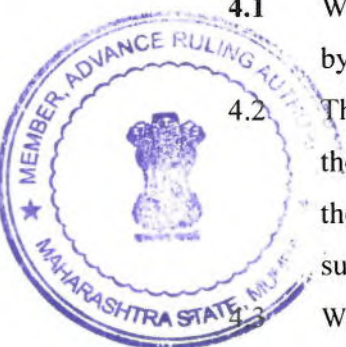
We now reproduce the question raised by them in the subject application which is as under:-

*"Whether the liability to pay tax on the subject supplies can be assessed based on taxability as accorded to Zero rated supply?."*

- 4.4 This authority can give rulings only as per the provisions mentioned in Sections 95 and 97 of the Act. Section 95 says that 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 reads as below:**

- (1) an applicant desirous of obtaining an advance ruling under this Chapter may make an application .....
- (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;
- (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.

4.5 We find from the above provisions of section 95, there are the conditions for filing of advance ruling application i.e. the applicant shall ask the question in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by them on matters or questions specified in subsection 2 of Section 97, and to that extent only shall the authority answer/give a ruling to those category of issues.

4.6 From the perusal of the question it is seen that their query is with respect to “assessment of their supplies based on taxability”. Such query does not fall under any of the clauses mentioned from (a) to (g) of subsection (2) of section 97 of CGST ACT. Hence we refrain from answering their question.

05. 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- 133/2018-19/B- 67 Mumbai, dt. 07/06/2019

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

**Question :-**Whether the liability to pay tax on the subject supplies can be assessed based on taxability as accorded to Zero rated supply'?

**Answer :-** The question does not fall within the purview of Section 97 of the CGST Act and is therefore not answered.



PLACE - Mumbai

DATE - 07/06/2019

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

sd  
B. TIMOTHY  
(MEMBER)

sd  
B. V. BORHADE  
(MEMBER)  
**CERTIFIED TRUE COPY**

sd  
**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, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai – 400021.