

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)
ORDER NO. MAH/AAAR/SS-RJ/28/2018-19 **Date- 03.04.2019**

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AATCS9118D1ZY
Legal Name of Appellant	Segoma Imaging Technologies India Pvt. Ltd.
Registered Address	BC-6021, B Tower, Bharat Diamond Bourse, Bandra Kurla Complex, Mumbai- 400 051
Details of appeal	Appeal No. MAH/GST-AAAR-28/2018-19 dated 03.01.2019 against Advance Ruling No. GST-ARA-30/2018-19/B-92 dated 20.08.2018
Jurisdictional Officer	Dy. Commissioner of SGST, (E-907), Nodal Division - 5, Mumbai.

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 Segoma Imaging Technologies India Pvt. Ltd.(herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-30/2018-19/B-92 dated 20.08.2018.



BRIEF FACTS OF THE CASE

- A. Segoma Imaging Technologies India Pvt Ltd (hereinafter referred as Segoma India) is Indian private limited company set up under the Indian Companies Act.
- B. Segoma India is 100% Subsidiary of Segoma Ltd (hereinafter referred as Segoma Israel) which is based in Israel.
- C. Segoma Israel is subsidiary of R2Net which is based in US.
- D. R2Net has agreement with customers for listing Diamonds online on website www.jamesallen.com.
- E. As per agreement between R2Net and customers of R2Net, R2NET lists on the system only those diamonds that are photographed with R2Net's proprietary Diamond Display Technology. Customer agrees to send its diamonds and/or gemstones to be photographed in R2Net's photography centers on a regular basis.
- F. R2Net has appointed Segoma Israel for photography service. Inturn, Segoma Israel has made agreement with Segoma India to do photography service.
- G. Segoma Imaging Technologies has developed a method of providing potential buyer(s) with what could be simplified as a '3D model' of the valuable stones & jewellery made available for the purchase thereof. The uniqueness of Segoma's technology is the ability to capture and display 3D real-life images of diamonds and gemstones to the extent that through these interactive images, an observer can identify their colour, clarity and cut. This grants buyers the confidence to rely on these images and make the right choice when deciding whether to make a purchase.
- H. Customers of R2Net give diamond on returnable basis to Segoma India. Segoma Israel does not have role in receiving diamond. Segoma India issues memo of receipt of diamonds to customers of R2Net. Segoma India takes photos of diamonds and upload photos of diamond on software of Segoma Israel .
- I. Segoma India charges Segoma Israel for providing above service of photography. Segoma Israel makes payment in convertible foreign exchange to Segoma India.



- J. Segoma India does not give copy of photos to customers of R2Net and does not charge any fees to customers of R2Net. R2Net has given link of software through which Customer can view photos but they cannot download photo from software.
- K. Segoma India is currently catering to Indian customers of R2Net only.

Grounds of Appeal

1. Segoma Imaging Technologies India Private limited (“Applicant”) had filed application under section 97 of the Central Goods and Services Tax Act, 2017 and Maharashtra Goods and Services Tax Act, 2017 dated 23.05.2018 before Maharashtra Authority for Advance Ruling. The Learned AAR passed an order dated 20.08.2018 (received on 07.12.2018) stating that conditions (iii) and (v) of section 2(6) “Export of services” of the IGST Act are not fulfilled by the Applicant.

Following are the conditions of section 2(6) of the IGST Act reproduced as

below: -

As per section 2(6) of IGST Act, “export of services” means the supply of any service when, -

- The supplier of service is located in India
- The recipient of service is located outside India
- **The place of supply of service is outside India**
- The payment for such service has been received by the supplier of service in convertible foreign exchange; and
- **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 of IGST Act.**



2. Therefore, we put our claim and further appeal to Honourable Appellate Authority for advance ruling' (AAAR) against the non-applicability of condition no: iii) and v) of section 2(6) "Export of services" of the IGST Act as per the grounds of appeal mentioned hereunder:

3. This, being a performance-based service falling u/s 13 (3) *The place of supply of the following services shall be the location where the services are actually performed, namely: -*

*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;*

Since the goods are physically made available by the Diamond dealers / Traders who are not recipient of service, it does not satisfy condition as mentioned in Sec 13 (3) (a), further the export condition no: (ii) Segoma Israel is recipient of service, has been accepted by the learned AAR.

4. Definition of Recipient of Service as per Sec 2 (93) of CGST:

(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 the consideration;*

(b)

(c)



5. Since there is a Consideration flow in the transaction i.e. payment is made by Segoma Israel in Foreign currency to Segoma Imaging India, the recipient of service cannot be other than Segoma Israel.
6. Further the benefits of the services have accrued to Segoma Israel which could upload and condition the photographs taken by Segoma India. A Service is not necessarily, a single, discrete, identifiable activity; on the contrary, it is a series of invisibles that caters to the needs of a recipient; it is upon the consumption of the service by the recipient that service is deemed to have become taxable, as Segoma Israel is the recipient of service, it shall fall outside the purview of 13 (3) (a) which has been alleged in the observations of AAR.
7. Further where services of Photography is provided by Segoma India due to its specialty in 3 D Photography, then such service would not be in relation to service provided by the service receiver located outside India.
8. From the above it should be contested that Place of Provision is Outside India and would not be taxable under the GST Act and should be considered place of Service provided outside India. Also, the learned AAR has ignored the fact that there is No Commission on Sales, or Pre or Post Sales services are provided by the applicant (Segoma India), to Segoma Israel. **Hence Provision of Sec 13 (3) (a) of the IGST Act is not applicable to Segoma India.**
9. **Further** the Rule of Interpretation which has been emphasized by AAR stands good for the Appellant also as there are no instances or relevance substantiated by AAR, and no



proof has been provided to validate their statement on page no:11 reproduced herein below:

“Thus, in this case the event of photography services pertaining to diamonds made physically available by the recipient of services to the provider of services is over and the services is clearly provided in India where the services are actually performed”.

10. The learned AAR in its observation has quoted that the ‘Rule of Interpretation’ is applicable here and hence taken a completely different path in explaining the Sec 13 3 (a), which is herein below defended:

11. Since the Learned AAR has failed to accept our claim of non-applicability of Sec 13 3 (a) and relied upon the Rules of Interpretation, to defend our stand we hereby elaborate the said Rules of Interpretation:

Section 13(3)(a) of the IGST Act:

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

(a) 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;”

.....

12. In the above context, The Learned Authority has stated that recipient of the service who wants to avail services has to make goods physically available **on direct or indirect directions to the service provider and it does not matter who owned the goods.**

13. The Learned Authority are of the view that the goods physically required for rendering services can be provided by any other person other than the recipient of the service, as it envisages that it is sufficient for the recipient of service **to make them physically available to the service provider for rendering the services even if the service receiver is not in control of the said goods or not in any physical possession.**

14. Therefore, let us first understand the Rules of Interpretation from the above context:

Interpretation of Statutes is required for two basic reasons viz. to ascertain:



- Legislative Language - Legislative language may be complicated for a layman, and hence may require interpretation; and
- Legislative Intent - The intention of legislature or Legislative intent assimilates two aspects:
 - i. the concept of 'meaning', i.e., what the word means; and
 - ii. the concept of 'purpose' and 'object' or the 'reason' or 'spirit' pervading through the statute.

15. Necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute.

16. If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the **Supreme Court in R.S. Nayak v A.R. Antulay, AIR 1984 SC 684** has held:

"... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating." (para 18)

Supreme Court in Grasim Industries Ltd. v Collector of Customs, Bombay,

(2002)4 SCC 297 has followed the same principle and observed:



“Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions.” (para 8)”

17. The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

18. Some Important points to remember in the context of interpreting Statutes:

- Statute must be read as a whole in Context
- Statute should be Construed so as to make it Effective and Workable – if statutory provision is ambiguous and capable of various constructions, then that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none.
- The process of construction combines both the literal and purposive approaches. The purposive construction rule highlights that you should shift from literal construction when it leads to absurdity.

19. In construing Statutes, the cardinal rule is to construe its provisions Literally and grammatically giving the words their ordinary and natural meaning. This rule is also



known as the Plain meaning rule. The first and foremost step in the course of interpretation is to examine the language and the literal meaning of the statute. The words in an enactment have their own natural effect and the construction of an act depends on its wording. **There should be no additions or substitution of words in the construction of statutes and in its interpretation.** The primary rule is to interpret words as they are. It should be taken into note that the rule can be applied only when the meanings of the words are clear i.e. words should be simple so that the language is plain and only one meaning can be derived out of the statute.

20. **In Municipal board v State transport authority, Rajasthan**, the location of a bus stand was changed by the Regional Transport Authority. An application could be moved within

30 days of receipt of order of regional transport authority according to section 64 A of the Motor vehicles Act, 1939. The application was moved after 30 days on the contention that statute must be read as "30 days from the knowledge of the order".

The

Supreme Court held that literal interpretation must be made and hence rejected the application as invalid.

Lord Atkinson stated, '**In the construction of statutes their words must be interpreted in their ordinary grammatical sense unless there be something in the context or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.**'



To avoid ambiguity, legislatures often include "definitions" sections within a statute, which explicitly define the most important terms used in that statute. But some statutes omit a definitions section entirely, or (more commonly) fail to define a particular term.

The plain meaning rule attempts to guide courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of a word found within a definition itself.

According to Viscount Haldane, L.C., if the language used has a natural meaning, we cannot depart from that meaning unless, reading the statute as a whole, the context directs us to do so.

21. However in our case term 'Receiver of Service' has been defined by the CGST Act u/s 2 (93) which is reproduced herein below:-

"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 the consideration;

(b)

(c)"

Since according to the plain meaning rule, and an absent contrary definition within the statute, words must be given their plain, ordinary and literal meaning.



If the words are clear, they must be applied, even though the intention of the legislator may have been different, or the result is harsh or undesirable. The literal rule is what the law says instead of what the law means. "Some laws are meant for all citizens (e.g., criminal statutes) and some are meant only for specialists (e.g., some sections of the tax code). A text that means one thing in a legal context might mean something else if it were in a technical manual or a novel. So, the plain meaning of a legal text is something like the meaning that would be understood by competent speakers of the natural language in which the text was written who are within the intended readership of the text and who understand that the text is a legal text of a certain type." (Prof. Larry Solum's Legal Theory Lexicon).

22. A literal construction would not be denied only because the consequences to comply with the same may lead to a penalty. The courts should not be over zealous in searching

for ambiguities or obscurities in words which are plain. (Tata Consultancy Services V. State of A.P. (2005) 1 SCC 308)14.

Understanding the literal rule:

The literal rule may be understood subject to the following conditions –

- i. Statute may itself provide a special meaning for a term, which is usually to be found in the interpretation section.
- ii. Technical words are given ordinary technical meaning if the statute has not specified any other.
- iii. **Words will not be inserted by implication.**
- iv. Words undergo shifts in meaning in course of time.



v. It should always be remembered that words acquire significance from their context.

When it is said that words are to be understood first in their natural ordinary and popular sense, it is meant that words must be ascribed that natural, ordinary or popular meaning which they have in relation to the subject matter with reference to which and the context in which they have been used in the Statute. **In the statement of the rule, the epithets 'natural, "ordinary", "literal", "grammatical" and "popular" are employed almost interchangeably to convey the same idea.**

23. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. [39] This rule is the most widely used Rule of Interpretation for the statutes to ascertain the legislative intention behind the framing of the enactment.

The rule governs and regulates the meaning of the law in as much as the rule provides that the meaning has to be ascertained from the text of the law itself. In *M/s. Hiralal Ratanlal v. STO* [40], this Court observed that

"In interpreting a statutory provision, the first and foremost rule of interpretation is the literal construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."

24. Moreover, it is been regularly held by Hon'ble Supreme Court of India that one of the basic principles of interpretation of Statutes is to construe the words according to



their plain, literal and grammatical meaning. If this principle is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. [41]

25. For determination of the meaning of any word or phrase in a statute, the first question is what is the natural and ordinary meaning of that word or phrase in its context in the statute but when that natural or ordinary meaning indicates such result which cannot be opposed to have been the intention of the legislature, then to look for other meaning of the word or phrase which may then convey the true intention of the legislature. In the case of 'Suthendran V. Immigration Appeal Tribunal, the question related to Section 14(1) of the Immigration Act, 1971, which provides that 'a person who has a limited leave under this Act to enter or remain in the United Kingdom may appeal to an adjudication against any variation of the leave or against any refusal to vary it. The word 'a person who has a limited leave' were construed as person should not be included "who has had" such limited leave and it was held that the section applied only to a person who at the time of lodging of his complaint was lawfully in the United Kingdom, in whose case, leave had not expired at the time of lodgment of an appeal. Another important point regarding the rule of literal construction is that exact meaning is preferred to loose meaning in an Act of Parliament. In the case of Pritipal Singh V. Union of India (AIR 1982 SC 1413, P. 1419(1982)), it was held that there is a presumption that the words are used in an Act of Parliament correctly and exactly and not loosely and inexactly.



26. Rationale for this Rule

Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues. They also point out that ordinary people and lawyers do not have extensive access to secondary sources. In probate law the rule is also favored because the testator is typically not around to indicate what interpretation of a will is appropriate. Therefore, it is argued, extrinsic evidence should not be allowed to vary the words used by the testator or their meaning. It can help to provide for consistency in interpretation.

- 27.** In interpreting a statutory provision, the first and foremost rule of interpretation is the literally construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. **The other rules of construction are called into aid only when the legislative intent is not clear.**

Moreover, it is been regularly held by Hon'ble Supreme Court of India that one of the basic principles of interpretation of Statutes is to construe the words according to their plain, literal and grammatical meaning. If this principle is contrary to, or inconsistent with, any expressed intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an



inconvenience, but no further. The onus of showing that the words do not mean what they tell lies heavily on the party who alleges it. [41]

The departure from this rule is allowed in few cases and in those cases where following rules supplement the literal rule of interpretation. This departure has beautifully been stated by the court in the following words:

When the astuteness of the legislature results in manifest ludicrousness or discrimination, the courts have wide powers to substitute their own astuteness.

Understanding words, phrases and sentences of a statute in their ordinary and natural meanings. In simple words, read the law as it is written without adding or deleting any words written in Law. This rule will not be applicable in following circumstances:

- i. If Language is Ambiguous i.e. two interpretations is possible.
- ii. If the literal interpretation defeats the actual intention of legislation.

In view of the above discussions, we would like to state that there have been additions or substitution of **words "direct or indirect directions"** in the construction of statutes by the Learned AAR Authority.

28. The Learned AAR Authority has since contradicted their own submission "*where, the language is clear and unambiguous used by legislature then the plain and natural meaning of the words should be supplied to the language used and resort to any rule of interpretation to unfold the intention is permissible only where there is any ambiguity*".



29. We humbly submit that, the Learned AAR Authority has inserted the words by implication which is open to interpret the meaning of the sentence '**by the recipient of service**' by expanding the service recipient to person other than the recipient itself.

30. Further as per the Definition of Recipient of Service as per Sec 2 (93) of CGST:

"(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 the consideration;

..... ."

There being a Consideration flow into the said transaction i.e. payment is made by Segoma Israel (Service recipient) to Segoma Imaging Technologies India Pvt. Ltd (Service Provider) the recipient of service is undoubtedly being M/s. Segoma Israel.

31. In light of the above-mentioned submission's and case law cited we have correctly interpreted the conditions of Place of supply for 'Exports' are satisfied for service provided Outside India and certainly not eligible to GST under CGST and MGST.

In the light of the above legal provisions we humbly submit that the place of supply does not fall under provisions of section 13(3)(a) of the IGST Act.

32. **Condition no (v): the supplier of service and the recipient of service are not merely establishment of a distinct person in accordance with Explanation 1 in section 8.**

Explanation1 – for the purpose of this Act, where a person has –

(i) an establishment in India and any other establishment outside India;



- (ii) an establishment in a state or Union territory and any other establishment outside that state or UT; or
- (iii) an establishment in a state or Union territory and any other establishment being a business vertical registered within that state or UT, then such establishments shall be treated as establishment of distinct persons.

The Learned Authority is of the opinion that Segoma is carrying on business in Indian territory as a representational office of Segoma Israel.

Analysis

Definition: A **representative office** is an **office** established by a company or a legal entity to conduct marketing and other non-transactional operations, generally in a foreign country where a **branch office** or **subsidiary** is not warranted.

- 33. First, Segoma India acts on principal to principal basis and has its own business set up in India. Segoma India does not provide any marketing services for Segoma Israel. Segoma India carries transactions independently.

On careful review of the above explanation 1 Segoma India having its separate PAN no and Corporate registration No. hence Segoma India cannot be considered a Branch office or representational office of Segoma Israel as the transactions are made Principal to Principal, and it is this transaction between Segoma India and Segoma Israel that is claimed as a Zero rated export supply and a transaction between distinct persons as per the IGST Act.



Case laws:

34. **Tandus Flooring India Pvt Ltd. Ruling No. AAR/ ST/ 03/2013 dated 26-8-2013. 2014 (33) S.T.R. 33 (A.A.R.)**

The services provided out of the taxable territory are not taxable in India in terms of section 66B of the Finance Act, 1994. However, the same are treated as 'export' only if satisfy conditions laid down under Rule 6A of Service Tax Rules, 1994. One of the conditions of Rule 6A provides that if the services are provided by an establishment of a person in the taxable territory to another establishment of the same person in the nontaxable territory, such transaction will not qualify as 'exports' (clause (f)). Consequently, even though such transactions may not be taxable in India, may not be entitled to export linked reliefs

In the given case, the applicant was a wholly owned subsidiary in India of a Singapore based Company. The applicant provided marketing and incidental services to another Group companies located in US and China. In consideration, of the above services, the Applicant used to earn convertible foreign currency. Apart from other questions related to exports, the question before the Authority for Advance Rulings (AAR) was whether the services provided by the Indian company to another group companies out of India, be regarded as services provided by one establishment to other establishment and therefore, whether disqualify as exports as per clause (f) of Rule 6A. 1.2 Ruling The transaction between two entities can be considered not to be exports only if the transaction is between two 'establishments' of the same person. AAR held that the group companies based at US and China were incorporated as separate legal entities under the respective laws.



CPF therefore they were not 'merely establishments' of the same person. They were 'distinct entities. In view of which, the services provided by Indian Company to other group companies would qualify as exports.

Therefore, the transaction between two group companies can qualify as exports, as the same are different legal entities and not just establishments of the same person as envisaged in Rule 6A(f) of Service Tax Rules, 1994.

35. Microsoft India (R&D) Pvt. Ltd. v/s Commr. Of Cus. & C. Ex., Hyderabad-IV Final Order No. 21236/2015, dated 25-5-2015 in Appeal No. C/00537 of 2009

Para 4. *"The impugned order concludes that Microsoft Corporation, USA is not the owner of the appellant or of MGSCI even though these entities may be subsidiaries of Microsoft Corporation USA, as they are distinct legal entities and therefore appellant and MGSCI are separate legal entities. The impugned order proceeds on the basis that while a holding company may have effective control over a subsidiary, such control does not amount to ownership of the holding company over the subsidiaries, which is the condition for sharing of assets".*

36. Notwithstanding anything mentioned above the Sec 97(2) of CGST MGST Act 2017,

Refers to the question on which the advance ruling is sought under this Act,

- (a) Classification of any goods or services or both under the Act;
- (b) Applicability of a notification issued under the provisions of the Act;
- (c) Determination of time and value of the goods or service 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 the applicant is required to be registered under GST;



(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 above, the GST Act 97 (2) Limits AAR to decide issues earmarked for it which does not cover the examination of Place of Supply, since AAR is constituted under the respective State/ UT and not Central Act.

37. Utility Powertech Ltd. In re (AAR Chhattisgarh)...

This would mean that the ruling given by the AAR will be applicable only within the Jurisdiction of the Concerned state in our case it is Maharashtra State GST, it is for this reason that question on determination of Place of supply cannot be addressed by AAR and hence applicability of Place of supply cannot be taken by AAR for lack of jurisdiction and hence Order of AAR is infructuous and liable to be struck down.

Personal Hearing

38. A personal Hearing in the matter was conducted 14.03.2019, wherein Shri Madhukar Khandekar, representative of the Appellant, reiterated their written submissions. Shri Manoj Ohekar, Deputy Commissioner of State Tax, appearing as jurisdictional officer, reiterated the same submissions, which he had been made before the Advance Ruling Authority.

Discussions and Findings

39. We have gone through the entire case records and submissions, written as well as oral, made by the Appellant as well as the respondent. We have also perused the AAR Order, wherein the members of the Advance Ruling Authority have observed that the photography activity, being performed by the Appellant on the diamonds



sent by the vendors of the R2Net, will attract CGST and SGST due to the reason that place of supply of the service will be in the state of Maharashtra in accordance with the provision of Section 13(3)(a) of the IGST Act, 2017 which stipulates that :

“The place of supply of the following services shall be the location where the services are actually performed, namely: —

(a) 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:

The AAR observed that since the service performed by the Appellant viz.- photography services in relation to the performance on goods, in this case the diamonds, which are being made available to the supplier of the service for the performance of the said service, the place of the supply of service will be the location where *the service is actually performed*. Since the goods are made available to the supplier of the service in the state of Maharashtra, the place of supply in the present case will be Maharashtra. Further, since the location of the supplier of the service is in Maharashtra and the place of the supply of the service is also in Maharashtra, it was held by the AAR that the said supply of the Appellant will be treated as an Intra – State supply in accordance with the provision of Section 8(2) of the IGST Act, 2017, which states as under:

“Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same state or same Union Territory shall be treated as intra-State Supply:”



40. In view of the findings, the AAR, while answering the second question asked by the Appellant, wherein the Appellant had asked whether the supply made by them will be a zero rated supply i.e. export within the meaning of Section 2(23) read with Section 2(6) of the IGST Act, 2017, held that the supply of the Appellant will not qualify as export of service, as the two of the 5 conditions prescribed for the export of a services, as laid out in Section 2(6) of the IGST Act, 2017, are not being satisfied by the Appellant in as much as (i) the place of the supply of the service is not outside India and also, (ii) the supplier of service and the recipient of service are merely establishments of a distinct person in accordance with explanation 1 in section 8 of IGST Act.
41. On perusal of the above facts and circumstances of the case, the moot issue, before us, is whether we have jurisdiction to decide the nature of the levy i.e. CGST and SGST or IGST, to be imposed on any supply of goods or services or both or not. Because the first question asked by the Appellant in their application before the Advance Ruling Authority is, whether the supply of photography service is liable to SGST under the Maharashtra SGST Act, 2017 and CGST under the CGST Act, 2017 or IGST under the IGST Act, 2017. And second question asked by the Appellant is, whether the said supply can be treated as export within the meaning of Section 2(23) read with Section 2(6) of the IGST Act, 2017. Therefore, in order to answer both these questions, we first have to examine our jurisdiction, which have, clearly, been laid out in the Section 97(2) of the CGST Act, 2017, which is being reproduced herein under:

“(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 under the Act;



- (b) Applicability of a notification issued under the provisions of the Act;
- (c) Determination of time and value of the goods or service or both;
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid;
- (h) Determination of the liability to pay tax on any goods or services or both;
- (i) Whether the applicant is required to be registered under GST;
- (j) 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.

On perusal of the above provision, we find that question on determination of the place of supply has not been covered in the above set of questions, on which the advance ruling can be given. Therefore, we cannot give any opinion or verdict on the question which involve the determination of the place of supply of the goods or services or both.

42. Now, coming to the present case, we observe that in order to determine which levy, whether CGST and SGST, or IGST will be imposed on the said supply of photography services of the Appellant, we will have to determine the place of supply. Then only, we can determine the nature of levy, whether CGST and SGST or IGST, which will be imposed on the said supply of service of the Appellant. Since, we do not have jurisdiction to determine the place of supply of services or goods or both, no ruling on this particular question can be passed by the Advance Ruling Authority. This rationale also holds true in case of the second question asked by the Appellant i.e. whether the said supply could be treated as export within the meaning of Section 2(23) read with Section 2(6) of the IGST Act, 2017.



43. In view of the above rationale, the Advance Ruling Authority should not have passed any ruling on the above mentioned two questions asked by the Appellant. Since, the Advance Ruling Authority have passed the ruling in the instant case by transcending its jurisdiction, we quash the impugned ruling passed by the Advance Ruling Authority and pass the order as under:

Order

We are of the opinion that since the questions asked by the Appellant are not covered under our scope and jurisdiction, no ruling can be passed in the instant matter.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

- Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Jurisdictional Officer
7. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
8. Office copy.