

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

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

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAGCP0837P1ZX
Legal Name of Applicant	M/s. PANBASE RESOURCES PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	1207, Mayuresh Chambers, 12th Floor, Sector-11, CBD Belapur, Maharashtra Navi Mumbai, Thane 400614
Details of application	GST-ARA, Application No. 74 Dated 02.12.2019
Concerned officer	Division-I, Commissionerate-Belapur.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	The Panbase Resources Private Limited is a private limited company duly registered under CGST/SGST & IGST Act bearing registration no. 27AAGCP0837P1ZX, having its registered office at 12th floor, 1207, Mayuresh Chambers, Sector-11, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614 is dealing in trading of Metals and supply of service as intermediary w.r.t. supply of Metals and earns commission on it.
Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s. PANBASE RESOURCES PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the "Commission" received by the Applicant in the convertible foreign exchange for rendering services as an "Intermediary" from overseas clients, on account of...
 - a. Trade in goods between an exporter abroad receiving such services and an Indian importer of goods, is an "export of services" falling under Section 2(6) & outside the purview of Section 13(8) (b), attracting zero-rated tax under Section 16 (1) (a) of the Integrated Goods and Services Tax Act, 2017?
 - b. If the answer to the question above is in the negative, whether the impugned supply of service forming as integral part of the cross-border sales/purchase of goods, will be treated as an "intra -state supply" under Section 8(1) of the IGST Act read with Section 2(65) of the MGST Act. Attracting CGST/MGST? And at what rate?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to 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.

FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions of the applicant is as under:-

- 2.1 M/s. Panbase Resources Private Limited is providing intermediary services to "overseas clients" and earning commission thereon. Transactions executed by overseas clients are of export of goods to the importers at India.
- 2.2 Section 13 of the IGST 2017, determines the place of supply of services where the location of the supplier or location of the recipient is outside India and Section 13(8) (b) states that, in case of intermediary services the place of supply shall be the location of the supplier of services.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER

The submissions of the jurisdictional officer are as under:-

- 3.1 The applicant has not submitted any documents in support of their questions. Further, they have submitted two copies of invoices raised on their overseas clients charging CGST/SGST on "Commission on Sales'.
- 3.2 The questions posed by the applicant involve determination of place of supply of the services provided, as the applicant considering himself as intermediary, has asked for a ruling on whether the services qualify to be an export or an intra-state supply of the services.
- 3.3 From the provisions of Section 97(2) of the CGST Act 2017, it is apparent that question on determination of the place of supply has not been covered in the above set of questions on which advance ruling can be given. Hence, the application of the applicant does not merit consideration and should be rejected. In support of this contention, the jurisdictional officer has cited the Order No. MAH/AAAR/SS-RJ/26/2018-19 dated 22/03/2019 passed by the Maharashtra Appellate Authority for Advance Ruling in the case of M/s. Micro Instruments.

04. HEARING

Preliminary hearing in the matter was held on 11.02.2020. Shri Jayesh Thakkar, C.A., Shri Sundar, Director, appeared and requested for admission of their application. Jurisdictional Officer Sh. Anuj Kumar, Assistant Commissioner, Div-I, CGST Belapur also appeared and made submissions. We heard both the sides.

05. OBSERVATIONS AND FINDINGS

- 5.1 We have gone through the facts of the case and the written submissions made by both, the applicant and the departmental authority. In the subject issue before us, we are asked to pass a ruling which would entail discussion of the 'place of supply' under the GST Act.
- 5.2 Before we decide the question raised in this application it is essential that it be first determined whether the said questions regarding activities undertaken by the applicant pertains to matters or questions specified in Section 97(2).
- 5.3 From a perusal of transaction as discussed above in their submissions, we observe that to answer their question we will be required to discuss the provisions of Section 13 and Section 2(6) of IGST Act, 2019, pertaining to export of services. Thus, to decide the issue, this authority will have to discuss the place of supply in the subject case.

5.4 As per Section 97(2) of CGST Act, the questions on which advance ruling is sought under this Act, shall be in respect of, matters or issues mentioned in Section 97 (2) (a) to (g) only. We find that, “place of supply of service” does not find mention in Section 97 mentioned above.

5.5 In the case of M/s. NES Global Specialist Engineering Services Pvt. Ltd., the Appellate Authority of Advance Ruling (AAAR), Maharashtra State, in its Order No. MAH/AAAR/55-R/03/2019-20 dated 02.08.2019, has made observations as under:-

“16: On perusal of the provision of section 97(2), we find that the question on the determination of place of supply has not been covered in the above set of questions, on which advance ruling can be given. Therefore, we do not have jurisdiction to pass any ruling on such questions which involve the determination of the place of supply of goods or services or both.

19: Thus, in view of the provision under section 2(6) of IGST ACT laid down in respect of export of services and above discussed provision laid down in section 97(2) of the CGST Act, 2017 encompassing the specific questions, which are sought under advance ruling, it can decisively be inferred that the questions raised by the respondent before Advance Ruling Authority were beyond the scope and jurisdiction of Advance Ruling, and hence do not warrant any ruling thereon”.

5.6 We also find that Appellate Authority of Advance Ruling, Maharashtra State (AAAR) has taken the same views on the similar matters before them namely, M/s Micro Instrument (Mrs.Vishakha Prashant Bhawe), vide appeal order no. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019, M/s Sabre Travel Network India Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/30/2018-19 dated 10.04.2019, M/s Asahi Kasei Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/01/2019-20 dated 19.06.2019, and in the case of M/s Segoma Imaging Technologies India Pvt Ltd, vide appeal order no. MAH/AAAR/SS-RJ/28/2018-19 dated 03.04.2019.

5.7 Relying on the abovementioned decisions of the Appellate Authority for Advance Ruling (AAAR) and in view of the provisions of Section 97 of the CGST Act, 2017, we find that this authority is not allowed to answer the subject question.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 74/2019-20/B-

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Mumbai, dt.

25/02/2020

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

The subject application filed for advance ruling is rejected, as being non-maintainable as per the provisions of the GST Act, 2017 and Rules made thereunder.



—sd—
A.A.CHAHURE
(MEMBER)

—sd—
P.VINITHA SEKHAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

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


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.