

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/98/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/10)

Date:14.10.2020

Name and address of the applicant	:	M/s. Sagar Powertex Private Limited Sagar House, Indian Red Cross Society , Nr. Old Vadaj Circle , Ashram Road, Ahmedabad-380013
GSTIN/ User Id of the applicant	:	24AADCS0473P1Z3
Date of application	:	20.02.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	24.09.2020(Through Video conferencing)
Present for the applicant	:	Shri Jay Raval

M/s. Sagar Powertex Pvt. Ltd., Sagar House, Indian Red Cross Society, Nr. Old Vadaj Circle, Ashram Road, Ahmedabad -380013 having a GSTIN: 24AADCS0473P1Z3, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the GGST Act.

2. M/s. Sagar Powertex Pvt. Ltd. is a registered person under GST since 1st July 2017. The applicant submitted that they are engaged in the agency business of weaving machineries wherein it is acting as an agent of foreign entities who are supplying such machineries directly to the end customer and the company is getting commission for being an intermediary, thereby creating Principal- Agent relationship. For the same, the applicant has entered into agency agreement with the parties situated outside India wherein it is getting certain amount as commission in the capacity of Agent/ intermediary from the foreign entities for the Supply of their machinery.

3. The applicant submitted the copy of agency agreement held between the applicant and the manufacturer and seller of textile sizing/warping equipment M/s. Ukil Machinery Co., Ltd., Republic of Korea, Korea. The salient features of the said agency agreement are as under :

Agency Agreement

This agreement, made by and between UKIL Machinery Co. Ltd., a corporation organized under the laws of Republic of Korea, located and doing business in the city of Pusan, hereafter called the “company” and “Sagar Agencies Pvt. Ltd.” having its principal office in Ahmedabad, India, hereafter referred to as “Agent”.

WITNESSETH

Whereas, the “company” is a manufacturer and seller of textile sizing/warping equipment and desires to secure the services of an agent to promote and negotiate sales of said equipment for the territory described below; and whereas "Agent" is desirous of securing the right to promote and negotiate sales of said "Company's" equipment, it is mutually agreed between said "Company" and "Agent" as follows:

1. The equipment to be covered under this agreement includes the 'Company's complete line of sizing & warping equipment.
2. The "Company" agrees to employ said "Agent" as its exclusive sales agent for the sizing/warping machinery and/or components and supplies for the territory of India.
3. Under the terms of the agreement, the 'company" agrees to pay a commission of 7.5% for all capital equipment sold in the allotted territory and 10% for all spare parts 'sold in the territory, on the FOB Busan, Korea selling price whether such orders are placed through the "Agent", as long as this agreement remains in force. It is further understood that the commissions on such sales are to be paid to the agent by said Company as such as accounts are collected. The commission on the sales of equipment shall be the only of compensation of any nature whatsoever due and owing from the "company" to the 'Agent". All expenses for the operation of Agents', office and activity as an independent contractor and free agent shall be borne by "Agent". In case of negotiated sales with discounts being offered to the customer by "company", the "company" reserves the right to negotiate the commission payable to the "Agent".
6. All sales by "Agent' for the account of the 'Company" accordance with shall be conducted in such prices, terms and condition as are specified by the "Company" from time to time.
7. All orders shall be subject to the “Company's" confirmation, and it is understood and acknowledged that "Agent" shall not oblige or commit the “Company" to-the sale or delivery of an products without the "Company's" express authorization or direction. It is further understood and

acknowledged that "Agent" shall not make or modify any contract on the Company's behalf.

8. The "Company" shall supply "Agent" without cost, from time to time at "Agent's" place of business, with reasonable quantities of advertising and selling literature, samples, displays, drawings, engineering or other product data as designed and made available by the "company" to be helpful in advancing sales of products. "Agent" shall be expected to make useful employment and effective use of such items, in accordance with its own best judgment and its own expenses, and not normally to be wasteful so such selling aids.
 9. It is understood that the 'company" shall forward to "Agent" with dispatch, all inquiries received from the territory herein agreed, for Agent's, attention and handling, along with copy of any acknowledgment the company, may deem proper under the circumstances to forward to the inquirer, and shall make available to "Agent" such sales, products, and technical information and estimates, specifications, and proposals where required, as may be advantageous to "Agent" in handling the inquiry intelligently and successfully.
 10. It is understood that the "company" shall forward to "Agent" with dispatch, all inquiries received from the territory herein "agreed", for "Agent's" attention and handling, along with copy of any acknowledgment the "Company", may deem proper under the circumstances to forward to the inquirer, and shall make available to "Agent" such sales, products, and technical information and estimates, specifications, and proposals where required, as may be advantageous to "Agent" in handling the inquiry intelligently and successfully.
 11. All inquiries received by "Agent" from points or sources outside the territory hereunder, shall be dispatched at once to the "Company" for attention and handling.
 12. "Agent" shall thoroughly, energetically and regularly represent the "Company" by circularizing, correspondence, and personal calls on prospective customers for the company's products in the territory allotted to him.
 17. "Agent" acknowledges the "Company's" ownership of all trademarks, trade names and patents associated with the "Company's" equipment.
4. Accordingly, the applicant sought the Advance Ruling on the following question :
1. In the said transaction, whether IGST is applicable or CGST + SGST is applicable.

Personal Hearing

5. Personal hearing in the matter was held on 25.09.2020. Authorised representative of the company appeared on behalf of the applicant and reiterated the submission made in the Application.

DISCUSSION & FINDINGS

6. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

7. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 GGST Act.

8. In this case, the moot point to be decided is as to whether the services provided by the applicant are liable to CGST and SGST or IGST? For this, we first need to know the nature of the transaction carried out by the applicant. As per the submission of the applicant, they have entered into an agreement with UKIL Machinery Co. Ltd., a corporation organized under the laws of Republic of Korea to sell their machinery in the Indian Territory. The applicant was appointed as its exclusive sales agent for the sizing/warping machinery and/or components and supplies for the territory of India. The "company" agrees to pay a commission of 7.5% for all capital equipment sold in the allotted territory and 10% for all spare parts 'sold in the territory', on the FOB Busan, Korea selling price of all such orders are placed through the "Agent" i.e. the applicant. The applicant against the said service received commission income from Korea in foreign currency. Based on the submission of the applicant and agreement entered with the company as well as the arguments and discussions made by the representative of the applicant during the course of personal hearing, it appears that the services provided by the applicant are in the nature of services of commission agents or commodity brokers who negotiate between buyers and sellers as a facilitator for the supply of goods for which they are paid a fee or commission. The said service can also be called as 'intermediary services'.

9. In simple terms 'intermediary' can be explained as a firm or a person, etc. who acts as a link between parties for the conduction of business, etc. We find from the submission and terms & condition of the agreement that the applicant is providing services as an intermediary. The facts also reveal likewise and therefore we first take up the definition of an "intermediary" as per GST laws.

10. The term 'Intermediary' is defined in Section 2(13) of IGST Act, 2017 as:-
'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."

From the above definition we find that an intermediary can be a broker, an agent or any other person who arranges and facilitates the supply of goods and/or services between two or more persons and who cannot change the nature of supply as provided by the principal.

11. From the facts before us we find that the applicant is covered by the said definition of an intermediary because they are definitely acting as an agent and facilitating the process for sale of machinery by their foreign principals to the Indian parties and for providing such service to the foreign principal the applicant is receiving the commission. The applicant in his applicant has submitted that, *"they are acting as an agent of foreign entities who are supplying such machineries directly to the end customer and the company is getting commission for being an intermediary, thereby creating Principal- Agent relationship."* It is very clear from the facts of transaction that the applicant is acting as an "agent" of the foreign company and neither providing services nor supplying the goods on their own account.

12. Further, the type of GST to be paid i.e. CGST + SGST or IGST is dependent on type of supply of goods or services provided i.e. intra-state or interstate or imports/exports and also on the place of supply of goods or services. Also, since the recipient of service in the instant case is located outside India as discussed earlier, we feel it necessary to refer to Section 13 of the IGST Act, 2017, which helps in determining the place of supply of services in cases where the location of the supplier of services or the location of the recipient of the services is outside India. The same reads, as under:

Section-13. (1) *The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.*

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

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

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

(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;

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

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

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

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

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

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

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

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

(9) The place of supply of services of transportation of goods -----

12.1 We have gone through the relevant provisions of Section 13 above and find that sub-section (2) of Section 13 specifically provides that the place of supply of services **except** the services provided in sub-sections (3) to (13) shall be the location of the recipient of services provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. In the instant

case, the supplier of service is the applicant and the service recipient is M/s. UKIL Machinery Co. Ltd, Republic of Korea. We find that the services provided by the applicant i.e. 'intermediary services' appears at Sub-Section (8)(b) of Section 13. Also, sub-section (8) clearly mentions that the place of supply in respect of the services described under the said sub-section shall be the location of the supplier of services. Further, the supplier in the instant case is the applicant and the location of the said supplier is in Gujarat. Now, since the location of the applicant, who is supplier of services, is in Gujarat and both the supplier of service as well as the place of supply of service is in Gujarat, the supply of services would be considered akin to intra-state supply of services and would be liable to CGST and SGST as per the provisions of Section 9(1) of the CGST Act, 2017. Section 9(1) of CGST Act, 2017 is read as under :

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Therefore, the applicant is liable to payment of CGST and SGST on the services provided by them as an 'intermediary'.

12.2 In light of the foregoing, we rule as under –

RULING

Q.1 In the said transaction, whether IGST is applicable or CGST + SGST is applicable.

Ans. In view of the above discussion applicant is liable to payment of CGST and SGST for the services provided as an "intermediary".

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 14.10.2020.