

RULINGS FOR THE STATE OF UTTARAKHAND

(Goods and Services Tax)

Present:

Shri Anurag Mishra (Member)

Shri Amit Gupta (Member)

In

Application No:05/2020-21

Advance Ruling 10/2020-21 Dated 15th October, 2020

1	Applicant	M/s Midas Foods (P) Ltd, Surjeet Bhawan, Main MP Chowk, Ramnagar Road, Kashipur. U S Nagar - Uttarakhand
2	Jurisdictional Officer	Assistant Commissioner, Sector-3, State Tax, Kashipur.
3	Present for the Applicant	Shri Ashwarya Sharma, Advocate.
4	Concerned Officer	None
5	Present for the Jurisdictional Officer	Ms Preeti Manral, Deputy Commissioner. SGST- Dehradun
6	Date of receipt of application	01.09.2020
7	Date of Personal Hearing	08.10.2020

Note Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017. an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

**AUTHORITY FOR ADVANCE RULING GOODS & SERVICE TAX
UTTARAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s Midas Foods (P) Ltd, Suijeet Bhawan, Main MP

Chowk, Ramnagar Road, Kashipur, U S Nagar -Uttrakhand seeking an advance ruling on following issues:

(a) Whether Overseas Commission Agent is covered within the definition of the term 'intermediary' as provided under section 2(13) of the IGST Act, 2017;

(b) Whether services received by applicant from the Overseas Commission Agent falls within the meaning of the term 'import of services' as provided under section 2(11) of the IGST Act, 2017;

(c) Whether the applicant is required to pay GST on RCM basis under section 5(3) of the IGST Act, 2017 on commission paid to the Overseas Commission Agent.

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. As per the said subsection (2) of Section 97 of the CGST/SGST Act, 2017 advance ruling can be sought by an applicant 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 the 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. In the present case applicant has sought advance ruling on classification and determination of the liability to pay tax on supply of services. Therefore, in terms of said Section 97(2) (a) & (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

5. Accordingly opportunity of personal hearing was granted to the applicant on 08.10.2020. Shri Ashwarya Sharma on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submissions already filed with the application. Ms Preeti Manral, Deputy Commissioner, SGST-Dehradun, concerned officer appointed by the State Authority, also present during the hearing proceedings.

6. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AACCM1659E1ZR. Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:

(i) the appellant is a supplier of goods and carries on the business of supply of seasoning, spices, premixes and similar food products to its customers located within and outside India;

(ii) To supply said goods outside India, they sometimes entered into an agreement with some specified person who can search & find out customers who are located outside India, so as to arrange supply of applicant's goods outside India;

(iii) For such facilitation, the applicant would pay commission to such specified person, ranging from 10-15% on the basis of FOB value of the consignment exported outside India;

(iv) The entire flow chart for supply of goods facilitated through such specified person is as follows:

- They arrange customers for the applicant,
- Applicant received PO from the customers located outside India;
- Applicant issues tax invoice under its own name and exports goods on the basis of PO;
- Payment is made directly into the bank account of the applicant by the specified person;
- Specified person raises his monthly commission invoice on the applicant as a fixed percentage of supplies,
- Applicant makes payment of commission invoice to said specified person as per the normal business practice.

(v) The applicant has entered into such agreement with a specified person namely Shri Bobby Kapoor, a resident of UAE

7. Before deciding the issues in hand, we first go through the MOU submitted by the applicant in this regard. On perusal of MOU dated 31.03.2019, the relevant portions are summarized as under:

(a) The said MOU is signed between the applicant & Mr. Bobby Kapoor, a resident of UAE;

(b) The supplies shall be made only on receipt of confirmed purchase orders, facilitated by Mr. Bobby Kapoor;

(c) Mr. Bobby Kapoor has ample experience in providing intermediary services in international market and is expected to provide such

services to represent the company before LULU Hypermarket, Tim Horions, Marafie and other customers facilitated by Mr Bobby Kapoor in Middle East and to provide product support, to arrange confirmed purchase orders, facilitate liquidation of bills raised by the company and to facilitate settlement of any concerns raised by the customers/company time to time

(d) Commission will be calculated on FOB value of the consignment;

(e) The payment of commission will be made on monthly basis based on receipt of sale proceed;

(f) This understanding shall be effective for the financial year 2019-20 from 1st April, 2019 to 31st March, 2020.

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed by taking the issues one by one:

(A) Overseas Commission Agent is covered within the definition of the term 'intermediary' as provided under section 2(13) of the IGST Act, 2017

A.1 In this context, we find that section 2(13) of the IGST Act, 2017 provides that "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or include a person who supplies such goods or services or both or securities on his own account.

A,2 On perusal of the agreement dated 31.03.2019 (supra), we find that Mr. Bobby Kapoor is engaged in providing intermediary services in the international market and the applicant wished to utilize his expertise to get confirmed purchase order from outside India and for that the applicant shall pay commission to Mr. Bobby Kapoor ranging from 10-15% on FOB value of the consignment.

A.3 On perusal of documents viz invoices, journal voucher submitted by the applicant, we find that the applicant has raised the invoices in the name of the foreign buyer in respect of goods exported and not in the name of Mr. Bobby Kapoor and has paid the commission to Mr. Bobby Kapoor on agreed terms.

A.4 In terms of legal provisions, we observe that any person who enables the supply of goods/services between two persons, is considered as intermediary. However, where a person is providing services or supplies goods on his own account to his customers, it cannot be termed as an intermediary. As per the agreement dated 31.03.2019, Mr. Bobby Kapoor has to arrange or facilitate the supply of goods of the applicant to international market and in return he shall get the commission on agreed terms.

A.5 Thus on perusal of legal provisions, agreement dated 31.03.2019 & other records submitted by the applicant in this regard, we observe that Mr. Bobby Kapoor, a overseas commission agent, falls within the definition of 'intermediary' as provided under section 2(13) of the IGST Act, 2017.

(B) As per facts & circumstances, services received by applicant from the Overseas Commission Agent falls within the meaning of the term 'import of services' as provided under section 2(11) of the IGST Act, 2017

B.1 In this context, we find that section 2(11) of the IGST Act, 2017 provides that "import of services" means the supply of any service, where-

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

B.2 On perusal of said legal provisions, we find that the services can be called as 'import of services' only when it has satisfied all the three conditions mentioned therein. On perusal of records, we find that the conditions (i) & (ii) are satisfied in as much as Mr. Bobby Kapoor, supplier of service, is located outside India being a resident of UAE and the applicant being the receiver of service, is located within India. Now in respect of bill condition, we find that the section 13 of the IGST Act, 2017 specifically deals with place of supply of a service as to whether a service can be termed as import of service or otherwise. On perusal of section 13 of the IGST Act, 2017, we find that the section 13(8) (b) of IGST Act, 2017 is relevant to the issue in hand which provides that the place of supply for the intermediary services would be the location of the supplier of such services (i.e. location of intermediary service provider). Thus we find that the condition (iii) is not satisfied as the place of supply of service is not in India.

B.3 Thus we observe that the services received by the applicant is out of the ambit of "import of services" in as much as the condition (iii), supra, is not satisfied in terms of section 13(8) (b) of IGST Act, 2017 as place of supply of service is out of India since the location of Mr. Bobby Kapoor, a intermediary, is UAE.

C. The applicant is required to pay GST on RCM basis under section 5(3) of the IGST Act, 2017 on commission paid to the Overseas Commission Agent.

C.1 We find that as per section 7(4) of IGST Act, 2017, supply of services imported into the territory of India shall be treated to be supply of services in course of inter-state trade or commerce.

C.2 On perusal of section 5 of the IGST Act, 2017, we find that the said section deals with levy and collection of tax i.e IGST and section 5(3) of the IGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

C.3 Thus on perusal of legal provisions, we find that 'import of services' shall be treated as inter-state supply of services and the same is chargeable to IGST under reverse charge i.e service recipient located within Indian territory has to pay the tax. Since the transaction is related to an intermediary service which is out of the ambit of 'import of services' as discussed in foregoing paras, accordingly we observe that GST under reverse charge is not payable on the same.

ORDER

In view of the above discussion & findings we hold as under:

- (i) Overseas Commission Agent is covered within the definition of the term 'intermediary' as provided under section 2(13) of the IGST Act, 2017;
- (ii) Services received by applicant from the Overseas Commission Agent do not fall within the meaning of the term 'import of services' as provided under section 2(11) of the IGST Act, 2017;
- (iii) The applicant is not required to pay GST on RCM basis under section 5(3) of the IGST Act, 2017 on commission paid to the Overseas Commission Agent.

ANURAG MISHRA (MEMBER)

AMIT GUPTA (Member)