

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 52/2021

Dated : 29-10-2021

Present:

1. Dr.M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. T. Kiran Reddy

Joint Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. Workplace Options India Private Limited, C2-601, 6 th Floor, No.1&2, Tower C, The Millenia, Murphy Road, Ulsoor, Bengaluru-560008.
2.	GSTIN or User ID	29AABCW5081H1Z2
3.	Date of filing of Form GST ARA-01	24-07-2021
4.	Represented by	Sri. Rishabh Singhvi, C A & Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Taxes, Bangalore East Commissionerate, Bengaluru. (Range-DED2)
6.	Jurisdictional Authority – State	ACCT, LGSTO-45, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under KGST Act vide CIN RBIS21062900136021 dated 21.06.2021 & Rs.5,000/- under CGST Act through debit from cash ledger on 21.06.2021

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Workplace Options India Private Limited, (herein after referred to as 'The Applicant') C2-601, 6th Floor, No.1&2, Tower C, The Millenia, Murphy Road, Ulsoor, Bengaluru-560008. having GSTIN 29AABCW5081H1Z2 have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of



KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.

2. The Applicant is a company, registered under the provisions of CGST/KGST Act, 2017, is engaged in providing human resource consulting services, employee assistance services to its corporate customers across India or outside India. The applicant is a part of a multi-national group and is a subsidiary of Workplace Options LLC.

3. Workplace Options LLC entered into a global arrangement with Beacon Health Options Inc.-US (previously known as Value Options Inc. – US), which is a company established in USA and does not have any office or fixed establishment in India, in November 2009 for the purpose of mutual referral of clients and work agreements to Workplace Option group companies across the globe. Beacon US, as part of the global arrangement, has entered into arrangement, for the Indian market involving Workplace Option India Pvt. Ltd., the Applicant and referred a customer M/s FIS Global Solutions India Pvt. Ltd., ('FIS India') to the applicant for performing employee assistant services, for which the Beacon US charges referral fee to the applicant, by raising an invoice directly to the applicant, equal to certain percentage of the price charged by the applicant to FIS India, as agreed by both the applicant and Beacon US.

4. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a. Whether the services procured by the applicant from Beacon US in respect of the referral of the FIS client is liable to tax under the IGST Act, 2017 and consequently whether the said service qualifies as an import of service under Section 2(11) of the said enactment?
- b. If the answer to the above is yes, who is the person liable to tax in respect of the said services rendered by Beacon US to applicant?

5. **BRIEF FACTS OF THE CASE:** The applicant furnishes the following facts relevant to the issue:

5.1 Workplace Options Private Limited ('Applicant' or 'Workplace') is a company engaged in providing human resource consulting services, employee assistance services to its corporate customers across India or outside India. The Applicant is part of a multi-national group and is a subsidiary of Workplace Options LLC.

Background of Transaction

5.2 Workplace Options LLC (US) has entered into a global arrangement with Beacon Health Options Inc. - US (previously known as Value Options Inc. - US) in November 2009 for purpose of mutual referral of clients and work agreements to

Workplace Option Group Companies across the Globe (enclosed as **Annexure B**). Beacon US is a company established in USA and does not have any office or fixed establishment in India.

5.3 As part of the global arrangement, Beacon Health Options Inc. ('Beacon US') has entered into arrangement for the Indian market involving Workplace Options India Private Limited (enclosed as **Annexure A**). The following are the key terms of the agreement:

- a. Beacon US had identified a customer in the name of FIS Global Solutions India Private Limited ('FIS India'). Beacon US has referred this client - FIS India to Workplace for performing employee assistance services to the said client.
- b. For the referral work performed by Beacon US, it is entitled to a referral fee (also known as commission fee) based on a formular which is agreed between the parties. The referral fee would be a percentage of the price charged by WPO India to FIS India.
- c. Beacon US would raise an invoice directly to Workplace India for this referral work and claim the percentage referral fee based on the billings made by WPO India to FIS India

5.4 Workplace would provide the employee assistance services to FIS India under the agreement with FIS India (enclosed as **Annexure C**). Workplace will charge GST on the services rendered by it to FIS India and make the appropriate payment of tax on its invoices.

5.5 The important features of the arrangement with Beacon US and FIS India which are worthwhile noting for the purpose of examining the scope of the definition of intermediary services is as follows:

- a. Beacon has the relationship with the end client FIS Global/ India and responsible for obtaining this client for Workplace Options
- b. Beacon has arranged the finalization of the agreements between Workplace India and FIS India and Workplace has disclosed this agreement with FIS to Beacon US since the referral fee is calculated based on the billings made by Workplace India to FIS India. The FIS agreement is attached as Exhibit I to the agreement between Workplace India to Beacon US.

- c. The right to claim referral fee arose to Beacon only after the client is finalized, the service is rendered and the billings are made by Workplace India to the client.



- d. Beacon is **arranging or facilitating** the employee assistance services by Workplace India to FIS India and has been instrumental in procuring the contract for Workplace India. It is a fact that the FIS would not have become the client of Workplace India if Beacon has not mediated this arrangement.
- e. Payments to Beacon would be made by Workplace India in foreign exchange based on the referral fee calculations on a monthly basis.

5.6 It may kindly be noted that though the said global agreement between Beacon US and Workplace Options LLC speaks of many other services, for the subject application, the applicant only seeks a ruling on the referral services which is being rendered between Beacon US and Workplace Options India. The business model in India clearly involves Beacon US recovering a referral fee from Workplace India based on the billings between Workplace India and FIS India.

6. Applicant's Interpretation of Law:

6.1 The applicant is seeking an advance ruling on the determination of the tax liability of the subject services procured by Workplace India from Beacon US in respect of referral of the FIS client to Workplace India. As part of this question, applicant also seeks a ruling on whether the said activity fall within the definition of 'intermediary services' under the IGST Act.

6.2 The applicant submits that the said activity of provision of referral services by Beacon US to Workplace India involving raising an invoice for the referral work in respect of the FIS contract, which it has arranged/ facilitate between FIS India and Workplace India, is an intermediary service and the said amount is not taxable in India in terms of the IGST Act. The reasons for this conclusion are submitted herewith.

Relevant Legal Provisions

6.3 The term service has been defined under section 2(102) of CGST Act 2017 to mean anything other than goods.

(102) "services" means anything other than goods, money and securities but includes

6.4 The said activity of providing referral services by Beacon US to Workplace India would be considered as a supply of service in terms of section 7 of the CGST/SGST Act, 2017. Beacon US is the service provider in the said transaction of referral activity and Workplace India is the service recipient of the referral activity. Having considered that the said activity as a service, the question is about the classification of the said activity as 'intra-state supply' or an 'inter-state supply'



and the consequential applicability of CGST/SGST or IGST under the respective enactments.

6.5 In order to decide the applicable legislation i.e. CGST/ IGST or SGST, one needs to examine of section 7 and 8 of the IGST Act. Section 7(1), (2), (3) and (5) of the IGST Act are not relevant for the said activity. Section 8 is also applicable only where services are rendered within India and not applicable to services rendered from outside India. We are therefore left to only examine Section 7(4) of the IGST Act which states that **services imported into the territory of India** shall be treated to be a supply of service in the course of inter-state trade or commerce. Consequently, the taxability of the said activity would have examined under the IGST law and not under the CGST/ SGST Act.

6.6 For examination of the taxability under IGST Act, Article 286 of the Constitution is relevant:

“Restrictions as to imposition of tax on the sale or purchase of goods.

286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or of services or both, where such supply takes place-

(a) outside the State; or

(b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a supply of goods or of services or both in any of the ways mentioned in clause (1).”

6.7 Section 1 of the IGST Act is applicable to the whole of India. India has been defined to mean the territory of India and the territorial waters and exclusive economic zone as defined under the respective enactments. Section 1 of the IGST Act read with Article 286(1) / (2) also **restrict jurisdiction of the IGST only to services which are supplied in India or whose place of supply is in India**. The parliament the inform of section 7 and 8 of the IGST Act formulated the principles of determining the place of supply of a transaction which would form the basis of whether the said transaction is within India or not. Therefore, where the services rendered outside India and does not constitute an import of service into India, the IGST law does not have jurisdiction to tax the same in India.

6.8 A service would be termed as imported into territory of India if it satisfies the provisions of section 2(11) of the IGST Act which reads as follows:

(11) “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;"

6.9 In the present case, Beacon does not have any presence or fixed establishment in India and hence Beacon US is considered to have been located outside India for the purpose of referral service. Workplace India is incorporated in India and being the recipient of the referral service can be said to be located in India.

6.10 The subsequent point of examination is whether the place of supply of service is in India. Since the service provider is outside India, section 13(1) of the IGST Act would have to be looked into. While reading section 13, one has to examine whether the provisions of section 13(8)(b) of the IGST is applicable and the said activity is classifiable as an 'intermediary services'. No other provision of section 13 is applicable to the said transaction.

6.11 Section 2(13) of IGST Act defines an intermediary service as follows:

"(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;"

6.12 A reading of the above definition requires us to examine whether Beacon US being the service provider can be considered 'intermediary'. The pre-conditions of satisfying this condition in the context of the said arrangement are as follows:

- a. Whether Beacon can be termed to be a broker, agent or any other person **who arranges or facilitates** the supply of goods or services or both between two or more persons?
- b. Whether exclusion of the person who supplies goods or services on his own account would be applicable here?

6.13 The applicant is of the view that the said referral activity by Beacon to Workplace is an intermediary activity wherein Beacon would fall within the definition of intermediary in terms of 2(13) of the IGST Act. Beacon is an intermediary on account of the following reasons:

- a. Beacon has arranged the employee assistance services between Workplace Place India and FIS India



- b. Beacon had identified FIS group globally for Workplace Group and interacted with FIS group for the proposal of providing employee assistance services. FIS group agreed to procure the said services from Workplace Place on the basis of the recommendation and/ or referral work by Beacon US. Until Beacon introduced FIS group to Workplace, Workplace would not have identified the FIS group as its client.
- c. The employee assistance services are provided by Workplace India to FIS India and the said deal was referred by Beacon US. Without the involvement of Beacon US, workplace would not have obtained this customer and FIS would not have obtained the employee assistance services from Workplace.
- d. FIS acknowledges that the employee assistance service from Workplace India and role of Beacon scope of work is only to refer the client i.e. FIS group to Workplace India
- e. As per clause 3 of the agreement dated 01.11.2019 any changes to the fee between Workplace India and FIS would also have to be agreed between Beacon US and Workplace India. This is a critical clause to show that Beacon is involved in all the matters of the contract between Workplace India and FIS India and also that Beacon US income is depending on the price agreed between Workplace India and FIS India.
- f. Beacon US is not providing the said referral activity on its own account but for the benefit of and behalf of Workplace India.

6.14 Since the said services by Beacon US to Workplace India qualifies as an intermediary, in terms of section 13 of the IGST Act, the place of supply of such intermediary services would be the location of the supplier of such intermediary services. As stated above, Beacon US is located outside India as a supplier of service and hence the said activity would not qualify as an 'import of services' under section 2(11) of the IGST Act.

6.15 The CBEC education guide dated 20/06/2012 explains the said intermediary service as follows:

5.9.6 What are "Intermediary Services"?

Generally, an "Intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus an intermediary is involved with two supplies at any one time;

the supply between the principal and the third party; and



- ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service", but provides the main service on his own account.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Seperation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

- i) Travel Agent (any mode of travel)
- ii) Tour Operator
- iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
- iv) Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.



6.16 The above explanation to the term 'intermediary services' makes the said activity of referral services provided by Beacon US to Workplace India as falling with the said term. This is primarily because Beacon US has acted as a mediator between Workplace India and FIS India. Beacon US has not altered or processed the employee assistance services by Workplace India to FIS India. FIS is also well acquainted with the fact that Beacon has referred the work to Workplace India and the main service (employee assistance service) would be provided by Workplace India. This establishes that Beacon US has arranged/ facilitated the services between FIS India and Workplace India. Hence the said activity falls within definition of 'intermediary services'.

6.17 Once the said activity is an intermediary service, the place of supply would be the location of intermediary. In this case, Beacon US being an intermediary in terms of the definition, the place of supply would be outside India since Beacon US is located outside India. The said activity would not qualify as an import of service since the place of supply would be outside India.

6.18 The levy provision under section 5(1) of IGST Act is applicable only if the said supply qualifies as an inter-state supply after applicable of section 7 of the said Act. As mentioned in the preceding paragraphs, the said activity is not liable to tax since the Place of Supply is outside India and the provisions of section 7(4) do not bring the transaction to tax in India. Accordingly, there is no necessity to even examine Section 5(3) of the IGST act read with Notification 10/2017-IGST which provides for the applicability of reverse charge tax (RCM). This is because the said notification would be applicable only if the tax is leviable under section 5(1) of the IGST Act.

6.19 In view of the above analysis there is no tax payable on Workplace options in respect of the services procured from Beacon US as an intermediary service provider.

PERSONAL HEARING PROCEEDINGS HELD ON 08.09.2021

7. Sri Rishabh Singhvi, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings held on 08.09.2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.



9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant herein is a subsidiary of M/s Workplace Options LLC (USA), who entered into a global arrangement with M/s Beacon Health Options Inc. -USA (formerly known as Value Options Inc.-USA), which is a company established in USA and does not have any office or fixed establishment in India, for the purpose of mutual referral of clients and work arrangements to Workplace Options Group Companies across the Globe.

11. M/s Beacon, USA, as part of global arrangement identified a customer M/s FIS Global Solutions India Private Limited ('FIS India') and referred the said client to the applicant, for a commission named as referral fee based on a formula, agreed by both the parties, which is equivalent to a percentage of the price charged by the applicant to FIS India. Beacon raised the invoice directly to the applicant for the referral fee.

12. In view of the above, the applicant sought for advance ruling in respect of the questions at para 4 supra, as to whether the impugned services provided by M/s Beacon, USA to the applicant are liable to tax under IGST Act 2017; whether the said service qualifies to be an import of service and if yes who is the person liable to pay tax.

13. We proceed to examine the issues, one by one. In terms of Section 5 of IGST Act 2017, IGST is levied on all inter-state supplies of goods or services, and in terms of Section 2(21) of Act, ibid, 'supply' shall have the same meaning as assigned to in Section 7 of the CGST Act 2017. The applicant, with regard to taxability of the impugned service, admitted that the said service amounts to supply in terms of Section 7 of the CGST Act 2017. It is also admitted by the applicant that the impugned services are imported into India and shall be treated to be an inter-state supply in terms of Section 7(4) of the IGST Act 2017.

14. Now we proceed to examine the issue as to whether the service received by the applicant from M/s Beacon, USA is covered under import of service or not. We invite reference to Section 2 (11) of IGST Act, 2017, in terms of which "import of Service" has been defined as a supply of service where

- The supplier of service is located outside India;
- The recipient of service is located in India; and
- The place of supply of service is in India;



In view of the above to decide whether the impugned services qualify to be import of services or not it is required to determine the place of supply of the impugned service, which is beyond the jurisdiction of this authority in terms of Section 97(2) of the CGST Act 2017. Thus we refrain from giving any ruling in this regard.

15. In view of the foregoing, we pass the following

RULING

The application is disposed off without any ruling as the determination of place of supply is beyond the jurisdiction of this authority.



(Dr. M.P. Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place Bengaluru - 560 009



(T. Kiran Reddy)

Member
MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 29-10-2021

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-45, Bengaluru.
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