



**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)**



ADVANCE RULING NO.HAR/HAAR/R/2018-19/6

(In Application No. 6 dated 12.01.2018)

Name & Address of the Applicant	: M/s Esprit India Private Limited, Building No.9B, 16 th Floor, DLF Cyber City, Phase-III, Gurgaon, Haryana-122002
GSTIN of the Applicant	: 06AACCE9909R1Zx
Date of Application	: 12.01.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (V) Determination of the liability to pay tax on any goods of services or both.
Date of Personal Hearing	: 09.04.2018
Present for the Applicant	: Sh. Nitin Agrawal, Power of Attorney Holder, M/s Esprit India Pvt. Ltd.

- The applicant namely M/s Esprit India is a subsidiary of M/s Esprit De Corp. (Far East) Limited, Hong Kong (EDCFE) which in turn is a fellow subsidiary of M/s Esprit Europe Service GmbH, Germany ('Esprit Germany'). EDCFE is a limited company incorporated in Hong Kong, acts as sourcing service provider for Esprit Germany, EDCFE assists Esprit Germany in sourcing (on a worldwide basis) of goods which includes wearing apparel, shoe & accessories and fabric.
- EDCFE has engaged Esprit India as a sub-contractor to provide sourcing services for the goods on a non-exclusive basis in India for Esprit Germany. Pursuant to the said arrangement, EDCFE has entered into an agreement dated 18.07.2016 with Esprit India in terms of which Esprit India has undertaken to provide various sourcing support services to EDCFE in relation to performance of the obligations under its contract with Esprit Germany.
- Under the agreement, Esprit India is appointed by EDCFE to provide services to EDCFE in relation to goods and merchandise including wearing apparel, shoes & accessories and fabric. A brief description of the functions/responsibilities of EDCFE and Esprit Germany and Esprit India is listed below:

S. No.	Functions/Activities	Role of EDCFE/ Esprit Germany	Role of Esprit India
1	Market research	No role	Esprit India conducts market research to understand market dynamics, gather pricing information from different suppliers and advise on the best available combination of price, quality and delivery of the goods for Esprit Germany.
2	Purchase of goods and trademark protection	Esprit Germany directly purchases goods from Indian suppliers	Esprit India performs its functions as a sub-sourcing contractor of EDCFE and does not purchase the goods or trade in its own name. It assists in protection of trademark which includes ensuring that all suppliers execute all trademark confirmation letters, comply with the trademark protection procedures and comply with the sourcing principles as adopted by Esprit Germany/EDCFE.
3	Identification of	EDCFE provide and	Esprit India responsible for collecting data for the purpose of vendor evaluation. Esprit India



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	suppliers	instructions to Esprit India regarding vendor selection process	undertakes vendor evaluation on various parameters including experience, reputation, quality of product, price etc. based on which the vendor is selected. Esprit India is also responsible for maintaining the existing and new supplier base in India.
4	Negotiation with the suppliers	Esprit Germany directly negotiate and contract with supplier in respect of goods sourced from India.	Esprit India only communicates the terms and conditions to the extent of instructions and requirements received from Esprit Germany (through EDCFE) but is not involved in negotiation.
5	Inspection and quality control	Esprit Germany and EDCFE frame guidelines for quality control procedures to be adopted during manufacturing, stock keeping in warehouse and transportation	Esprit India based on the guidelines received from EDCFE conducts quality checks at various stages of production. It also checks whether the goods meet the specification, quality, delivery time, and other requirement of Esprit Germany.
6	Logistics	Products are dispatched by the suppliers to Esprit Germany.	Esprit India makes logistics arrangement for the goods in accordance with the instructions of Esprit Germany received through EDCFE and assure that all documents related to shipment of the goods Esprit Germany are proper.
7	Contract conclusion	No role	Esprit India does not participate in activities which bring supplier and Esprit Germany into binding contract of purchase of goods.
8	Invoicing and payment	Suppliers directly invoice to Esprit Macao and it makes payment directly to the suppliers	No role in the invoicing and payment process as all invoices are sent directly by suppliers to Esprit Germany without any involvement of Esprit India

4. Questions on which ruling has been sought by the applicant, are as under:

- (i) Taxability of above stated services provided by Esprit India to its associate concern in Hong Kong EDCFE under GST regime.
- (ii) Whether the above stated services provided by Esprit India are covered under Export of Services having Zero rated taxability.
- (iii) Whether Esprit India is eligible for seeking refund of GST for the taxes paid on input services or goods or both.

RECORDS OF PERSONAL HEARING – 2ND PROVISIO TO SECTION 98(2) OF CGST/HGST ACT, 2017

5. Personal hearing in the instant case was conducted on 09.04.2018, which was attended by Sh. Nitin Agrawal, Power of Attorney Holder, M/s Esprit India Pvt. Ltd. He reiterated the submissions made in their application for advance ruling after detailed discussions, the decision was reserved which is being released today.

DISCUSSIONS AND FINDINGS OF THE AUTHORITY

6. As regards the taxability of above stated services provided by Esprit India to its associate concern in Hong Kong EDCFE under GST regime, it is observed that as per as per Explanatory Notes to the Scheme of Classification of Services read with Notification No.11/2017-Central Tax (Rate) dt.28/07/2017 (as amended), the services enumerated by the applicant in tabular form as given above, qualify as taxable services, in the following manner and chargeable to GST under forward charge.



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5. No.	Functions/Activities	Role of EDCFE/Esprit Germany	Role of Esprit India	SAC & Description	Taxability
1	Market research	No role	Esprit India conducts market research to understand market dynamics, gather pricing information from different suppliers and advise on the best available combination of price, quality and delivery of the goods for Esprit Germany.	998371 Market research services. This service code includes market analysis, analysis of competition and the behaviour of consumers; use of research monographs, statistics, econometric models surveys, etc	Taxable under forward charge @ 18% [S.No.21(ii) of Notification No.11/2017-Central Tax (Rate) dt.28.07.17]
2	Purchase of goods and trademark protection	Esprit Germany directly purchases goods from Indian suppliers	Esprit India performs its functions as a sub-sourcing contractor of EDCFE and does not purchase the goods or trade in its own name. It assists in protection of trademark which includes ensuring that all suppliers execute all trademark confirmation letters, comply with the trademark protection procedures and comply with the sourcing principles as adopted by Esprit Germany/EDCFE.	998599 Other support services n.e.c. Business services of intermediaries and broker; specialist advice other than for real estate, insurance and engineering, management services for rights to industrial property (patents, licences, trademarks, franchises, etc.)	Taxable on forward charge @ 18% [S.No.23(ii) of Notification No.11/2017-Central Tax (Rate) dt.28.07.17]
3	Identification of suppliers	EDCFE provide guidelines and instructions to Esprit India regarding vendor selection process	Esprit India responsible for collecting data for the purpose of vendor evaluation. Esprit India undertakes vendor evaluation on various parameters including experience, reputation, quality of product, price etc. based on which the vendor is selected. Esprit India is also responsible for maintaining the existing and new	998599 Other support services n.e.c. This service code includes business brokerage and appraisal services other than for real estate;	Taxable under forward charge @ 18% [S.No.23(ii) of Notification No.11/2017-Central Tax (Rate) dt.28.07.17]



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			supplier base in India.		
4	Negotiation with the suppliers	Esprit Germany directly negotiate and contract with supplier in respect of goods sourced from India.	Esprit India only communicates the terms and conditions to the extent of instructions and requirements received from Esprit Germany (through EDCFE) but is not involved in negotiation.	998599 Other support services n.e.c. Business service of intermediaries and brokers;	Taxable under forward charge @ 18% [S.No.23(ii) of Notification No.11/2017-Central Tax (Rate) dt.28.07.17]
5	Inspection and quality control	Esprit Germany and EDCFE frame guidelines for quality control procedures to be adopted during manufacturing, stock keeping in warehouse and transportation	Esprit India based on the guidelines received from EDCFE conducts quality checks at various stages of production. It also checks whether the goods meet the specification, quality, delivery time, and other requirement of Esprit Germany.	998311 Management consulting and management services including financial, strategic, human resources, marketing, operations and supply chain management This service code also includes iv. Product development, quality assurance and quality management; plant safety, security and protection	Taxable under forward charge @ 18% [S.No.21(ii) of Notification No.11/2017-Central Tax (Rate) dt.28.07.17]
6	Logistics	Products are dispatched by the suppliers to Esprit Germany.	Esprit India makes logistics arrangement for the goods in accordance with the instructions of Esprit Germany received through EDCFE and assure that all documents related to shipment of the goods Esprit Germany are proper.	998311 Management consulting and management services including financial, strategic, human resources, marketing, operations and supply chain management This service code includes services provided in relation to logistics management.	Taxable under forward charge @ 18% [S.No.21(ii) of Notification No.11/2017-Central Tax (Rate) dt.28.07.17]



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7. As regards the question of above stated services provided by Esprit India, also being covered under export of services having zero rated taxability, it is observed that "zero rated supply" has been defined under Section 16(1) of the Integrated Goods and Services Act, 2017, as under:

"zero rated supply" means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

Further, as per Section 2(6) of the IGST Act, 2017, export of services is defined as under:

2 (6) "export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;**
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) 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;

From the above, it is evident that whether a transaction is "export of services" or not, is dependent upon the fact as to whether the place of supply of service is out of India or not. Consequently, if the advance ruling authority proceeds ahead with examination and consideration of this fact, discussions and findings on the aspect of "place of supply" will be inevitable. Whereas, Section 97(2) of the CGST/HGST Act, 2017 empowers the Advance Ruling Authority to decide the issues, which are as follows:-

- (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 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.
- The Act limits the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2). Therefore, where a question also involves examination of "place of supply" (which is not among



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the issues which can be decided by AAR], the question cannot be taken up by the authority for lack of jurisdiction.

8. As regards refund of GST paid on inputs and input services used in export of services, is dependent upon the fulfillment of conditions as prescribed under Section 2(6) and Section 16(1), both of the Integrated Goods and Services Tax, 2017. Such refund claims merit to be examined in terms of provisions of Section 54 of the CGST/HGST Act, 2017 and rules made thereunder. The proper officer under the CGST/HGST Act, 2017 and rules made thereunder is the competent authority for the same.

However, with regard to giving Advance Ruling on this question, it is observed that as the earlier question relating to export of services is dependent upon the definition of "place of supply", which is out of jurisdiction of the authority, this instant question too, being corollary to earlier question, cannot be taken up for pronouncing any ruling due to lack of jurisdiction.

ADVANCE RULING UNDER SECTION 98 OF THE CGST/HGST ACT, 2017

9.1. The services provided by Esprit India to its associate concern in Hong Kong EDCFE are taxable supplies, as discussed in para 6 above.

9.2. The above stated services being taxable supplies, the question as to whether they qualify as "export of services" and accordingly "zero rated supply", is out of jurisdiction of this authority, in view above discussions in para 7.

9.3. The same proposition, as discussed in para 9.2 above, applies to the question as to whether Esprit India is eligible for seeking refund of GST for the taxes paid on input services or goods, due to lack of jurisdiction.

Ordered accordingly.

To be communicated.

11.04.2018
Panchkula.


(Sangeeta Karmakar)
MEMBER


(Vijay Kumar Singh)
MEMBER

Regd. AD/Speed Post

M/s Esprit India Private Limited,
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Copy to:

1. The Deputy Excise and Taxation Commissioner (ST), Gurugram (East)
2. The Additional Commissioner, CGST, Gurgaon Commissionerate.

Certified true copy

