MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27AACCB8750D1ZS
Legal Name of Applicant		Behr-Hella Thermocontrol India Pvt. Ltd.
Registered Address/Address provided while obtaining user id		Elpro Compound, City Survey No. 4270, Chinchwadgaon, Pune 411 033
Details of application		GST-ARA, Application No. 12 Dated 17.04.2018
Concerned officer		PUNE-BST-E-001 , PUNE DIV, PUNE
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Testing Services
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"] by Behr-Hella Thermocontrol India Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following question.

Whether in the facts and circumstances of the case, the Applicant is liable to pay Integrated Goods and Services Tax on the testing services provided to its overseas group entities, being a zero-rated supply?

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The submission (Brief facts of the case), as reproduced verbatim, could be seen thus –

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required (refer Sl. No. 15 of Form ARA-01)

1. The Applicant is a private limited company incorporated under the Companies Act, 1956. The registered office of the Applicant is situated at Elpro Compound, City Survey No. 4270, Chinchwadgaon, Pune – 411 033. The Applicant is a 100% subsidiary of Behr-Hella Thermocontrol GmBH, Lippstadt, Germany (hereinafter referred to as "BHTC Germany"). The Applicant is registered under GSTIN No. 271800000581ARQ.

2. In the normal course of business, the Applicant has entered into service agreements with BHTC Germany and its other overseas group entities such as Behr-Hella Thermocontrol, Inc. (hereinafter referred to as "BHTC USA") and Behr-Hella Thermocontrol (Shanghai) Co. Ltd. (hereinafter referred to as "BHTC Shanghai"), inter alia, for

providing testing services. Hereto annexed and marked as **Exhibit "A"** is the copy of the Service Agreement entered into by the Applicant with BHTC Germany.

3. The testing services provided by the Applicant are in relation to the prototype goods supplied by the overseas group entities to determine whether the products so tested function in accordance with the requisite standards based on certain identified parameters such as temperature, environment, durability, etc. The tests are directly carried out on the prototype goods provided by the overseas group entities.

4. By way of deliverable, the Applicant sends across the testing report to the overseas group entities usually through emails. The prototype goods are usually not sent back. Hereto annexed and marked as **Exhibit "B"** is the specimen test report prepared and sent by the Applicant.

5. For providing the said testing services, the Applicant receives the consideration in convertible foreign exchange. Hereto annexed and marked as **Exhibit "C"** are the specimen invoices raised by the Applicant on its overseas group entities for providing the said testing services.

Based on the above facts, the Applicant now wishes to confirm its analysis that the "Place of Supply" of the testing services rendered by the Applicant to its overseas group entities is "outside India", as detailed in Annexure-II of this application, and accordingly, the Applicant submits this Advance Ruling application to the Hon'ble Authority for Advance Ruling.

The Applicant craves leave to submit such further facts as may be relevant after admission of the application or at the time of hearing.

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the questions(s) on which advance ruling is required

In light of the facts of the case (as explained in Annexure I) and the question in respect of which the Applicant seeks an Advance Ruling, the Applicant's interpretation of facts and law in respect of the aforesaid questions is as follows:

Question: Whether in the facts and circumstances of the case, the Applicant is liable to pay Integrated Goods and Services Tax on the testing services provided to its overseas group entities, being a zero-rated supply?

Applicant's submissions

1.1 With effect from 01 July 2017, indirect tax regime in India has shifted from multiple taxes by multiple authorities at multiple times to a consolidated Goods and Services Tax ("GST") regime.

1.2 Conceptually, GST is a "destination based tax on consumption of goods and services", meaning thereby that the tax would accrue to the taxing authority which has jurisdiction over the "place of consumption" which is also termed as the "place of supply". In this regard, a reference is made to the Frequently Asked Questions on GST issued by the Central Board of Excise & Customs, New Delhi dated 31 March 2017 (2nd Edition) which highlights the conceptual understanding of GST as under:

Q 1. What is Goods and Services Tax (GST)?

Ans. It is a destination based tax on consumption of goods and services. It is proposed to be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

Q 2. What exactly is the concept of destination based tax on consumption?

Ans. The tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

1.3 Section 7(5) of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as the "IGST Act") provides that supply of service shall be treated as a supply of service in the course of inter-State trade or commerce when the supplier is located in India and the place of supply is outside India.

1.4 As per Section 16 of the IGST Act, "export of service" shall qualify as "Zero rated supply" and can be supplied without payment of IGST.

1.5 Thus, even if a supply is in the course of inter-State trade or commerce, the same can be supplied without payment of IGST if it qualifies as an export of service.

1.6 In terms of Section 2(6) of the IGST Act, a supply of service shall qualify as export of service when:

(a) the supplier of service is located in India;
(b) the recipient of service is located outside India;
(c) the place of supply of service is outside India;
(d) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
(e) 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;

1.7 The terms "supplier of service" and "recipient of service" defined under Section 2(105) and Section 2(93) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") are reproduced herein below for ease of reference:

2. ***Definitions***

*****

(93) "recipient" of supply of goods or services or both, means –

where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

where no consideration is payable for the supply of a services, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both.

*****

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

*****

1.8 In the facts and circumstances of the present case, it is not in dispute that the Applicant is the "supplier of services" in terms of Section 2(105) of the CGST Act, and the overseas group entities, being liable to pay the consideration for the services supplied by the Applicant, are the "recipient of services" in terms of section 2(93) of the CGST Act.

1.9 Thus, condition provided under clause (a) and (b) of Section 2(6) of the IGST Act are satisfied in the present case.

1.10 It is not in dispute that the Applicant is receiving the consideration for the supply of the service in the form of convertible foreign exchange from the overseas group entities. Thus, condition provided under clause (d) of Section 2(6) of the IGST Act is also satisfied.

1.11 Further, the Applicant and its overseas group entities are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8 of the IGST Act.

1.12 Explanation 1 to Section 8, inter alia, provides that where a person has an establishment in India and another establishment outside India, then such establishments shall be considered to be establishments of distinct persons.

1.13 In the present case, the Applicant and the overseas group companies are not merely establishments of a singular entity but are separate entities in themselves.

1.14 Thus, condition provided under clause (e) of Section 2(6) of the IGST Act is also satisfied.

1.15 Now the only condition that needs to be satisfied for the testing service provided by the Applicant to its overseas group entities to qualify as export and therefore a "zero rated supply" which can be supplied without payment of IGST is whether the "place of supply" is outside India.

1.16 Hence, the "place of supply" is relevant to decide the taxability and the status of taxability of the testing services provided by the Applicant to its overseas group entities.

1.17 The provisions for determining the place of supply of services are contained under Section 13 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as the "IGST Act"). The relevant extracts of Section 13 of the IGST Act are reproduced below for ready reference:

13. Place of supply of services where location of supplier or location of recipient is outside India

(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 exported after repairs without being put to any other use in India, than that which is required for such repairs;*

*****

1.18 The terms "location of the recipient of services" and "location of the supplier of services" have been defined under Section 2(14) and Section 2(15) of the IGST Act as under:

Definitions

2. In this Act, unless the context otherwise requires, -

*****

(14) "location of the recipient of services" means, -

(a)where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b)where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c)where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d)in the absence of such places, the location of the usual place of residence of the recipient;

(15) "location of the supplier of services" means, -

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*

(c) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*

(d) *in absence of such places, the location of the usual place of residence of the supplier;*

1.19 The term "usual place of residence" has been defined under Section 2(113) of the CGST Act as under:

Definitions

2. In this Act, unless the context otherwise requires, -

*****

(113) "usual place of residence" means –

(a) in case of an individual, the place where he ordinarily resides;

(b) in other cases, the place where the person is incorporated or otherwise legally constituted;

1.20 In view of the above, while the location of the Applicant is in India in terms of Section 2(15)(a) of the IGST Act, the recipient of services (i.e., the overseas group entities) are located outside India in terms of Section 2(14)(d) of the IGST Act.

1.21 Further, a bare perusal of Section 13 of the IGST Act would reveal that generally, the place of supply of services shall be the location of the recipient of services in terms of Section 13(2) of the IGST Act, except in case of the services specified in sub-sections (3) to (13) of Section 13 of the IGST Act.

1.22 The Applicant understands that sub-sections (4) to (13) of Section 13 of the IGST Act are irrelevant in the present case for the purpose of determination of the "place of supply" of the testing services provided by the Applicant to its overseas group entities.

1.23 It is further submitted that the case of the Applicant does not fall within the ambit of Sub-section (3) of Section 13 of the IGST Act as well.

1.24 In terms of section 13(3)(a) of the IGST Act, the place of supply of services provided in respect of goods which are required to be made physically available to the supplier of services shall be the location where the services are actually performed.

1.25 In the present case, having regard to the nature of services rendered by the Applicant to its overseas group entities, it is mandatory for the overseas group entities to provide prototype goods to the Applicant. Further, the Applicant would be conducting tests in India and thereafter sending the test reports outside India to the overseas group entities on whose behalf the Appellant has carried out the testing services.

1.26 The Applicant is required to submit a test report and the contractual obligation of the Applicant towards overseas group entities in terms of the provision of testing services is complete only when the test reports are delivered to them. In other words, the provision of service is complete only when the test report is delivered to the overseas group entities.

1.27 It is submitted that the delivery of the test report by the Applicant to its overseas group entities is the most important part of the services rendered by the Applicant. In fact, the overseas group entities, as recipient of services, are expecting the test report and nothing apart from that.

1.28 As stated above, GST is a destination based tax on consumption of goods and services. Further, "Services" are something intangible in nature. Thus, service is something which is not visible but the person receiving the same is deriving some benefit from its performance. Thus, GST is levied where the service is actually getting consumed.

1.29 It is submitted that Section 13(3)(a) of the IGST Act covers within its ambit those cases where the ultimate deliverable is the performance of a particular activity on the "goods". Thus, the recipient is concerned with the goods and performance of the desired activity on the goods. For example, in case of storage of goods, the service recipient is concerned with the storage of goods for a particular time period. The provision of service is complete once the goods are stored for the said period.

1.30 In the instant case, the overseas group entities are neither concerned with the prototype goods made available by them nor with the tests performed by the Applicant on the said goods. The provision of service by Applicant is not complete by merely testing the said prototype goods. The Applicant is under an obligation to prepare the test report recording the findings of the tests performed by it and submit the report to the overseas group entities. In other words, the ultimate deliverable or the actual provision of service is the provision of the test report.

1.31 Further, there is no compulsion on the Applicant to return the prototype goods to the overseas group entities which further confirms that the overseas group entities are not concerned with the goods. Therefore, the actual consumption of the testing services performed by the Applicant is happening outside India in the form of the test reports.

1.32 The aforesaid position is further substantiated by the second proviso to Section 13(3)(a) of the IGST Act which provides that even though the repairing of goods is done in India, the place of supply shall be outside India if the goods after repairs are exported out of India. The rationale behind such exclusion appears to be that no GST should be levied as the goods will be ultimately used or consumed outside India.

1.33 The above contention is also supported by the judgment of the Hon'ble Bombay High Court in the case of **Commissioner of Service Tax, Mumbai – II v. SGS India (P.) Ltd.** reported in **2014 (34) S.T.R. 554 (Bom.)**, wherein the Hon'ble Bombay High Court held that service tax is a destination based consumption tax and therefore, even though the testing of goods has happened in India, the service will be treated as export of service as the benefit of service is accruing outside India. In a nutshell, the Hon'ble Bombay High Court held

that since the delivery of the test report to the foreign clients was an essential part of testing services, the said services must be treated to be consumed abroad and therefore, falling within the ambit of "export of services" not liable to service tax. The relevant extracts of the judgment are reproduced below for ready reference:

24. In the present case, the Tribunal has found that the assessee like the respondent rendered services, but they were consumed abroad. The clients of the respondents used the services of the respondent in inspection/test analysis of the goods which the clients located abroad intended to import from India. In other words, the clients abroad were desirous of confirming the fact as to whether the goods imported complied with requisite specifications and standards. Thus, client of the respondent located abroad engaged the services of the respondent for inspection and testing the goods. The goods were tested by the respondents in India. The goods were available or their samples were drawn for such testing and analysis in India. However, the report of such tests and analysis was sent abroad. The clients of the respondent were foreign clients, paid the respondent for such services rendered, in foreign convertible currency. It is in that sense that the Tribunal holds that the benefit of the services accrued to the foreign clients outside India. This is termed as 'export of service'. In these circumstances, the Tribunal takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'export of service'. Such an act does not invite a Service Tax liability. The Tribunal relied upon the circulars issued and prior thereto the view taken by it in the case of KSH International Pvt. Ltd. v. Commissioner and B.A. Research India Ltd. The case of the present respondent was said to be covered by orders in these two cases. To our mind, once the Hon'ble Supreme Court has taken the view that Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country. It is this finding and conclusion of the Hon'ble Supreme Court which has been applied by the Tribunal in the facts and circumstances of the present case.

25. The view taken by the Tribunal therefore, cannot be said to be perverse or vitiated by an error of law apparent on the face of the record. If the emphasis is on consumption of service then, the order passed by the Tribunal does not raise any substantial question of law.

1.34 The aforesaid judgment of the Hon'ble Bombay High Court has been followed by it in the case of **The Pr. Commissioner of Mumbai Commissionerate v. QIndia Investment Advisory Pvt. Ltd.** reported in **2017-TIOL-2171-HC-MUM-ST**.

1.35 Since GST is also a "destination based consumption tax" on goods and services, relying upon the judgment of the Hon'ble Bombay High Court in SGS India (P.) Ltd. *(supra)* and QIndia Investment Advisory Pvt. Ltd. *(supra)*, it is submitted that the place of supply in case of the testing service provided by the Applicant to its overseas group companies is also outside India.

1.36 In this regard, it is further submitted that even if the services are provided from India, since the actual consumption of the testing services is taking place outside India, the place of supply of services ought to be outside India in terms of Section 13(2) of the IGST Act.

Basis the above discussion, it is submitted that the "place of supply of service" in respect of the testing services provided by the Applicant to the overseas group entities is to be determined in terms of Section 13(2) of the IGST Act which provides that the place of supply shall be the location of the recipient of service i.e. outside India.

1.38 In view of the above, it is submitted that the testing services provided by the Applicant to its overseas group entities qualify as export of services and therefore, zero rated supply as defined under Section 16 of the IGST Act. Further, the Applicant can supply the said testing services to its overseas group entities without payment of IGST in terms of Section 16(3)(a) of the IGST Act.

TESTING SERVICE AGREEMENT
Effective as of January 1, 2014

BETWEEN

Behr-Hella Thermocontrol GmbH, a company incorporated under the laws of the Federal Republic of Germany, having its registered office at Stuttgart, register court HRB 20260, and its principal place of business at Hansastraße 40, 59557 Lippstadt, Federal Republic of Germany, represented by its Managing Directors Mr. Thomas Schulte and Dr. Andreas Teuner (hereinafter called "BHTC") of ONE PART

AND

Bebr-Hella Thermocontrol India Private Limited, a Company incorporated in India and having its Registered Office at Elpro Compound, City Survey No. 4270, Chinchwadgaon, Pune - 411033, India, , represented by its Director and CEO Mr. Shrivardhan Gadgil (hereinafter called "BHTCIN") of OTHER PART.

Whereas –

a) BHTC,IN was incorporated on February 10, 2006. BHTCIN is in the process of undertaking activities as developer, manufacturer, producer, purchaser, seller, importer, exporter, distributor, dealer, commission agent and market representatives of all kinds of Control Equipment and Units for Air conditioning and Climate Control systems and to render services related to design, development and testing of Control Equipments and Climate Control systems;

b) BHTC desires to engage BHTCIN for testing services related to Control Panel projects with BHTC and its group companies. The nature of work inter alia include:

Providing testing services for automotive specifically related to air condition control panel and accessories, on physical product sample for the customers located in different geographics. Activities carried out broadly include:

- Functional tests
- Electrical tests

- Mechanical tests
- Life cycle tests
- Endurance tests
- Illumination tests
- Environmental tests -
- Software tests
- Product robustness tests

All the test activities are carried out using climate chambers, test & measuring equipments etc. Above tests will result in respective test report generation. Deliverables in this case includes test reports, compliance reports, conformance/ non conformance reports etc. Testing is carried in manual mode and also in automated mode

c) BHTCIN is interested in accepting such engagements from BHTC and willing to provide services related to man and machine resources as per requirement of BHTC (hereinafter referred to as "Services"); and

d) BHTC and BHTCIN mutually desire to set forth in this Agreement certain terms and conditions applicable to all such engagements;

Now it is hereby agreed as follows:

1. Scope, Duties and Responsibilities of BHTCIN

a. BHTCIN shall recruit and maintain duly qualified, skilled and experienced resources to provide services to BHTC and its group companies as agreed in the beginning of each calendar year with BHTC. These services will be provided from BHTCIN facility or on-site as per requirement of BHTC or its affiliates.

b. BHTCIN will track its resources in the manner agreed with BHTC and will ensure that the time booking is done properly on respective projects, BHTCIN is expected to take care that their own project hours are not captured on BHTC projects. BHTC will receive corresponding documentation which will be a matter of a separate, operational notification.

c. BHTCIN will enter the hours in SAP system or any other tool as may be defined in consultation with BHTC on fortnightly basis under the respective project codes. At the end of each month, the same will form basis of invoicing by BHTCIN. The due dates for the closing of the monthly accounts will be adhered to.

d. BHTCIN will have administrative and operational control on resources available with it. BHTCIN will ensure maintenance of IT tools, equipments and other infrastructure as necessary to provide services in timely manner and with desired quality. BHTC will receive corresponding documentation which will be a matter of separate, operational notification.

2. Scope, Duties and Responsibilities of BHTC

a. BHTC shall ensure full work load for resources planned and available at BHTCIN with all information and details about the projects. All resources identified and agreed in the business plan will have to be used by BHTC and will be invoiced by BHTCIN.

b. BHTC will provide. 4.rolling plan on services required from BHTCIN in the beginning of each calendar month covering next three months outlook of the project jobs which could be assigned to resources at BHTCIN

c. The technical coordinators at BHTC shall work closely with Dianagers/supervisors at BHTCIN and will be responsible for the quality of deliverables and the project timelines.

d. BHTC will support BHTCIN for building competencies and enhance efficiency and productivity through sufficient workloads, exposure to now projects/technologies, training and mentoring. BHTC will plan and send its experts to visit BHTCIN for technical training of resources at its own costs and the same will be invoiced separately from: BHTC to BHTCIN.

e. BHTC will help BHTCIN to develop an induction training program for the new resources hired at BHTCIN which will define the initial training roadmap and also the time period after which they will be considered eligible for working on the projects. Such training costs will be bome by BHTCIN

3. Invoicing

BHTCIN shall submit invoices to BHTC on Time basis once a month based on available resource hours for BHTC projects. All invoices shall be due and. payable within thirty (30) days of presentment, subject to the approval and acceptance by BHTC and shall be addressed to BHTC's Technical Coordinator.

The invoice will mention the brief description of the project as well as the project number (TCE number or similar as requested by BHTC). In case resource available for BHTC projects are not fully utilized, the appropriate cost code will be provided by BHTC to BHTCIN to enable invoicing for the same.

The hourly rate to be considered for invoicing shall be reviewed between the parties in the beginning of each calendar year commencing from January 2014 and shall be notified separately.

BHTC will pay the hourly rate plus travel expenses (Air ticket, Transportation, Lodging, Meals or allowance), which will be approved in advance by BHTC for each Professional on project assignment on site at BHTC Lippstadt or at any other location. (BHTC will receive corresponding documentation)

Except as expressly agreed with BHTC, BHTCIN shall bear all of its own expenses arising from its performance of its obligations under this Agreement, including (without limitation) expenses for facilities, work spaces, training, utilities and the like.

4. Ownership and Rights

In relation to jobs received by BHTCIN from BHTC, all original and intermediate written material, including programs, documentation, CDs, diskettes, listings and any other material generated by BHTCIN personnel for BHTC shall belong exclusively to BHTC.

5. Confidentiality

a. Except as provided by clause 5(b) herein below, BHTC and BHTCIN shall at all times during the currency of this Agreement and thereafter:

i. Use their best endeavours to keep all Restricted Information confidential and accordingly not to disclose any Restricted Information to any other person; and

ii. Not use any Restricted Information for any purpose other than the performance of their respective obligations under this Agreement

b. Any Restricted Information may be disclosed by BHTCIN to any employees of the Company to such extent only as is necessary for the purposes contemplated by this Agreement subject in each case to BHTCIN using all reasonable endeavours to ensure that the recipient employee keeps the same confidential and does not use the same except for the purposes for which the disclosure was made.

6. Export Compliance

BHTCIN agrees that they shall not violate Indian export laws and regulations and this Agreement shall indemnify, defend and hold BHTC harmless from and against any and all claims, proceedings, damages, penalties and obligations arising directly or indirectly from a breach of this provision.

7. Assignment

BHTCIN is not allowed to assign this Agreement or any part of this Agreement to a third Party without prior written consent of BHTC.

8. Change of ownership

BHTCIN must inform BHTC of any pending change in ownership of the BHTCIN as soon as the change is more likely than not. Upon notice of a pending change in ownership BHTC reserves the right to change the terms and conditions of this agreement without any concurrence of BHTCIN.

9. Term and Termination:

a. This Agreement supersedes the Service Agreement between BHTC and BHTCIN dated January 1, 2012 and amendments thereof and shall come into force on the date of its execution and shall lasts until 315 December 2015 and will be automatically renewed if none of the parties terminates within ninety (90) days in advance.

b. If BHTCIN commits any act of insolvency or any provision for winding up is admitted against BHTCIN, BHTC shall be entitled to forthwith terminate this Agreement.

c. If BHTCIN commits a material breach of the provisions of this Agreement which is not cured within thirty (30) days of the date of receipt of a cure notice by BHTCIN, BHTC shall be entitled to terminate this Agreement.

10. Force Majeure

If the performance of this Agreement is impeded or there are reasonable grounds for anticipating that the same is or threatens to be impeded or rendered impossible by Force Majeure, such imminent outbreak of existence of hostilities or war like operations, whether declared or not, international or civil, involving the Government or either of the parties to this Agreement or the Major Powers, or Force Majeure of any other kind and such situation continues for a prolonged period, then either Party may by giving a notice to the other, terminate this Agreement provided that such termination shall be without prejudice to existing rights and obligations at the date of the termination.

11. Severability Clause

If a provision of this agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the contract shall be construed as if the same had not been inserted. The Parties hereby agree to make an amendment to the contract containing a legal, valid or enforceable provision.

12. Amendments and Modifications

All amendments or modifications to this Agreement must be in writing, identified as an amendment to this Agreement and signed by an authorized representative of each Party

13. Governing LAW

This Agreement shall be subject to the laws of the Federal Republic of Germany. For all claims arising out of or in connection with this Agreement -- as far as statutorily allowed -, the courts competent for Behr-Hella Thermocontrol GmbH domicile shall have jurisdiction.

Additional submissions 06.09.2018

WRITTEN SUBMISSIONS

1. At the outset, the Applicant expresses their gratitude to this Hon'ble Authority for Advance Ruling for granting a patient hearing to the Applicant on 29 August 2018. Pursuant to the liberty granted, the Applicant hereby makes the following submissions in addition and without prejudice to the submissions made in the Application dated 19 June 2018 and during the course of the hearing on 08 August 2018 and 29 August 2018.

BRIEF FACTS:

2. Behr-Hella Thermocontrol India Pvt. Ltd., the Applicant herein, has entered into service agreements with its holding company, BHTC Germany, and other overseas group companies, inter alia, for providing testing services in respect of prototype goods, being air condition control panel and accessories for automobiles. A copy of a sample service agreement is attached at page 17 of the application.

3. Pursuant to the agreements, the overseas group companies sent the prototypes to the Applicant. The Applicant directly carries out tests based on certain identified parameters and sends across the test reports to the overseas group companies, usually, via email. The prototype goods are not usually sent back. The copy of the test report us attached as page 27 of the application.

4. On the basis of the said test reports, the overseas group companies then make the suggested alterations to the product design and manufacture products based thereon.

SUBMISSIONS:

A. We refer to and reiterate the submissions made in para 1.1 to 1.38 of the application. The said submissions are summarized as follows:

(i) The services of testing of the prototypes provided by the Applicant to its group companies are appropriately classified under Section 13(2) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act");

(ii) The services of testing of prototype and providing the report based on which mass production is undertaken is more in the nature of advisory/ consultancy service, rather than the services prescribed under Section 13(3) of the IGST Act which, inter alia, entail provision of service on the goods made available physically by the recipient of service and which are subsequently returned to the recipient. The classic examples of services prescribed under Section 13(3) of the IGST Act are repair of car, maintenance of machines etc.;

(ii) The service of the Applicant is not complete until the report is delivered to the overseas group companies, i.e., the recipients of services. The said recipients of services are interested in the result of the testing of the prototypes based on which the mass production can be undertaken;

(iii) All the conditions as prescribed under Section 2(6) of the IGST Act for the purpose of qualification of "export of services" are satisfied and hence the services rendered to the group companies qualify as export of service.

B. Without prejudice to the submissions made in the Application, it is submitted that the issue regarding the place of supply / place of provision of service in case of Technical Testing and Analysis Services, where the report is delivered outside India, is settled by various decisions of the Hon'ble High Court and Hon'ble Appellate Tribunal.

C. It is submitted that the Hon'ble High Court and the Hon'ble Appellate Tribunal have taken a consistent view that service tax being a destination based consumption tax, the place of supply/ place of provision of the said services are outside India and the said services qualify as export of services.

D. Under the service tax regime, as applicable prior to 2012, i.e., prior to the negative list based approach of taxation of services, the conditions prescribed for qualifying as export of services were laid down in the Export of Services Rules, 2005. The relevant extracts of the Export of Services Rules, 2005 are reproduced below:

"3. Export of taxable service. -

The export of taxable service shall mean, -

****

(2) in relation to taxable services specified in sub-clauses (a), (), (h), (i), (i), (1), (m), (n), (o), (s), (t), (u), (w), (x), (y), (2), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zu), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzj), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzu), (zzw), (zzx) and (zzy) of clause (105) of section 65 of the Act, such services as are performed outside India:

Provided that if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India;

Provided further that for the purposes of this sub-rules, any taxable services provided shall be treated as export of services only if -

(a) such service is delivered outside India and used in business or for any other purpose outside India; and

(b) payment for such service provided is received by the service provider in convertible foreign exchange;"

E. A bare perusal of the above makes it clear that even under the Export of Services Rules, 2005, the Technical Testing and Analysis Services, as defined under Section 65(105)(zzh) of the Finance Act, 1994, were deemed *to be exported only if such services were performed outside India. It is* submitted that the said provisions are substantially similar to the provisions of the Place of Supply Rules as provided under Section 13 of the IGST Act.

F. Further, w.e.f. 01 April 2011, Rule 3(2) of the Export of Services Rules, 2005 was amended and condition for the Technical Testing and Analysis Services for qualifying as export of services was changed from the place of performance of service to the location of the recipient of service.

G. The aforesaid amendment indicates that the intention of the legislature at all times was to treat the said testing and analysis services, the report for which was issued to the overseas service recipient as export of service, based on the location of the recipient of service. The key factor being that service tax was a destination based consumption tax and the services with regard to the said testing were being consumed outside India. The Frequently Asked Questions (FAQs) to the Central Goods and Services Tax Act, 2017 published by the CBI&C

states that Goods and Services Tax is also a destination based consumption tax and hence, the same intent should be applicable to the Goods and Services Tax law as well.

The copy of the Export of Service Rules, 2005 (prior and post the amendment of 2011) is annexed at page numbers 6 to 16 of the second compilation of documents. The copy of the FAQs to the Goods and Services Tax Act is annexed at page 19 of the first compilation of documents.

H. W.e.f. 01 July 2012, i.e., post the implementation of negative list based taxation of services, the qualification of Export of Service was determined by Rule 6A of the Service Tax Rules, 1994, read with Place of Provision of Services Rules, 2012. The provisions of said Rule 6A of the Service Tax Rules, 1994 are substantially identical to the Section 2(6) of the IGST Act and the provisions of Rule 4 of the Place of Provision of Service Rules, 2012 are identical to the provisions of Section 13(3) of the IGST Act. The relevant extracts of the Place of Provision of Services Rules, 2012 have been reproduced below:

RULE 4. Place of provision of performance based services. -

The place of provision of following services shall be the location where the services are actually performed, namely:

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service.

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

I. In view of the aforesaid, it is submitted that the provisions of Section 13(3) and 2(6) of the IGST Act are substantially identical to the provisions of the erstwhile Finance Act, 1994 (supra). Hence, the ratio of the judgments of the Hon'ble High Court and the Hon'ble Appellate Tribunal issued under the erstwhile Finance Act, 1994 remain applicable to the present case and the same cannot be brushed aside merely on the grounds of being issued under the erstwhile Finance Act.

J. The judgment of the Hon'ble Bombay High Court in Commissioner of Service Tax, Mumbai-II v/s. SGS India Pvt. Ltd. reported in 2016 (34) STR 554 (Bom.) is a leading judgment on the prevalent issue wherein, the Hon'ble Bombay High Court while interpreting the Export of Services Rules, 2005 has held as follows:

24. In the present case, the Tribunal has found that the assessee like the respondent rendered services, but they were consumed abroad. The clients of the respondents used the services of the respondent in inspection/test analysis of the goods which the clients located abroad intended to import from India. In other words, the clients abroad were desirous of confirming the fact as to whether the goods imported complied with requisite specifications and standards. Thus, client of the respondent located abroad engaged the services of the respondent for inspection and testing the goods. The goods were tested by the respondents in India. The goods were available or their samples were drawn for such testing and analysis in India. However, the report of such tests and analysis was sent abroad. The clients of the respondent were foreign clients, paid the respondent for such services rendered, in foreign convertible currency. It is in that sense that the Tribunal holds that the benefit of the services accrued to the foreign clients outside India. This is termed as export of service'. In these circumstances, the Tribunal takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'export of service? Such an act does not invite a Service Tax liability. The Tribunal relied upon the circulars issued and prior thereto the view taken by it in the case of KSH International Put. Ltd. v. Commissioner and B.A. Research India Ltd. The case of the present respondent was said to be covered by orders in these two cases. To our mind, once the Hon'ble Supreme Court has taken the view that Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country. It is this finding and conclusion of the Hon'ble Supreme Court which has been applied by the Tribunal in the facts and circumstances of the present case.

The copy of the said judgment in the case of SGS India Pvt. Ltd. has been attached at page 25 of the first compilation of documents.

K. It is submitted that said judgment in the case of SGS India Pvt. Ltd. (supra) has been followed by the Hon'ble Bombay High Court in the case of QIndia Investment Advisory Pvt. Ltd. reported in 2017-TIOL-2171-HC-MUM-ST. The copy of the said judgment has been attached at page 31 of the first compilation of documents.

L. The aforesaid two judgments are issued under the Export of Services Rules, 2005. The Hon'ble Tribunal, in Commissioner of Central Excise, Pune-I v/s. Sai Life Sciences Ltd. reported in 2016 (42) STR 882 (Tri.- Mum.) relying upon the judgment of SGS India Pvt. Ltd. (supra) has held that even for the period post 01 July 2012, i.e., post the insertion of the Place of Provision of Services Rules, 2012 and the negative list based taxation of services, the testing services provided to overseas entities wherein the report is sent outside India qualify as export of services. A copy of the said judgment of Sai Life Sciences Ltd. (supra) is attached at page 35 of the first compilation of documents.

M. As submitted above, the said Rule 4 of the Place of Provision of Services Rules, 2012 and Section 13(3) of the IGST Act are identical and hence, the judgment of the Hon'ble Appellate Tribunal in the case of Sai Life Sciences (supra) is squarely applicable to the facts of the present case.

N. Without prejudice to the above it is submitted that the aforesaid judgments are binding judicial precedents. Merely because an appeal has been preferred against the judgment of the Hon'ble Bombay High Court in the

case of SGS (supra), the ratio of the said judgment cannot be said to be in jeopardy, as no stay has been granted against the same. In this regard, reliance is placed on the following judgments:

(i) Union of India v/s. Kamlakshi Finance Corporation Ltd. reported in 1991 (55) ELT 433 (SC);

(ii) Mycon Construction Ltd. v/s. Union of India reported in 2017 (350) ELT 514 (Bom.);

(III) Shree Sai Vamika Industries v/s. Union of India reported in 2017 (347) ELT 93 (Gau.)

The copies of the said judgments are attached at pages 31 to 36 of the second compilation of documents.

In view of the aforesaid, it is submitted that the place of supply of the testing services provided by the Applicant is outside India and the testing services qualify as export of service in terms of Section 2(6) of the IGST Act.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

M/s. Behr Hella Thermocontrol India Pvt. Ltd. have raised the following question on which advance ruling is required.

"Whether in the facts and circumstances of the case, the applicant is liable to pay Integrated Goods and Services Tax on the testing services provided to its overseas group entities, being a zero-rated supply?"

Above question of M/s. Behr Hella Thermocontrol India Pvt. Ltd. is examined in light of section 13 of IGST Act, 2017.

Section 13(1) to (13)(3) reads as under:

Sec(13): Place of supply of services where location of supplier or location of recipient is outside India.

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.

The applicant has entered into service agreement with BHTC Germany. The prototype goods are supplied by BHTC Germany on which tests are conducted by the applicant. The test reports are sent to BHTC Germany by e mail. The consumption of test reports takes place outside India. Hence this office is of the opinion that section 13(3) is not applicable to the applicant. Subsections (4) to (13) of section 13 are also not applicable to the applicant. The transaction of applicant falls under subsection (2) of section (13) and the place of supply is outside India.

"Export of Service" is defined u/s 20)(6) of IGST Act as under:

(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;

The applicant satisfies the clauses of sec(2)(6) and as the place of supply of service is outside India, this office is of the view that the applicant is not liable to pay Integrated Goods and Services Tax on the testing services provided to its overseas group entities.

The applicant may carry out export of service under LUT/Bond without payment of IGST or may carry out export with payment of IGST and claim refund later on.

04. HEARING

The case was taken up for preliminary hearing on dt. 13.06.2018, with respect to admission or rejection of the application when Sh. Prasad Paranjape, Advocate along with Sh. Arun Jain, Advocate

appeared and requested for admission of application as per their contentions in ARA application. They were specifically informed that the question that they have raised in application is with respect to place of supply which is not covered in the scope of section 97 of CGST Act and therefore cannot be entertained. Accordingly they were requested to immediately reframe their question and contentions and submissions if required within one week and accordingly application would be treated as fresh application. The jurisdictional officer was not present.

The applicant filed revised application and preliminary hearing was held on 08.08.2018 when Sh. Mihir Mehta, Advocate along with Sh. Suyog Bhave Advocate appeared and requested for admission of application as per contentions in their application. The jurisdictional officer Sh. Ramesh Phadtare, Dy. Commr. S. T. (PUNE-BST-E-001), Pune Division, Pune appeared and stated that they will be making detailed submissions in due course.

The application was admitted and final hearing was held on 29.08.2018, Sh. Mihir Mehta, Advocate along with Sh. Suyog Bhave Advocate and Sh. Sandeep Deshmukh, D G M Finance appeared and made oral and written submissions and requested time for further submissions before 06.09.2018. The jurisdictional officer, Sh. Ramesh Phadtare, Dy. Commr. S. T. (PUNE-BST-E-001), Pune Division, Pune appeared and made written submissions.

05. OBSERVATIONS

5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department.

5.2 The facts of the subject matter are that the Applicant has entered into service agreement for providing testing services in relation to the prototype goods supplied by their overseas clients. The tests are directly carried out on the prototype goods provided by the overseas group entities and based on the same, the Applicant prepares the testing report and sends across the said report to their overseas clients by way of emails. The prototype goods are usually not sent back and the Applicant receives the consideration in convertible foreign exchange. The issue that has been raised by the applicant is with respect to 'place of such supply' of services rendered by them. They are contending that the place of supply is outside India and therefore such services have been exported by them and accordingly they have made their submissions in support of their contention. Therefore we find that the basic issue before us is to ascertain whether such supply of services provided by the applicant are export of services or not.

5.3 In the subject case it is seen that the supplier of service is in India and the receiver of the service is outside India and therefore as per Section 7(5) of the IGST Act we find that the supply of service in this case shall be treated as a supply of service in the course of Inter-State trade.

5.4 Now we take the opportunity to discuss whether the supply of service by the applicant in this case attracts the provisions of Section 2(6) of the IGST Act, so as to be treated as an export of service so as to qualify as "Zero rated supply" under the provisions of Section 16 of the IGST Act.

5.5 An exporter of services in the case of Inter-State trade must satisfy all the conditions of Section 2(6) of the IGST Act which is reproduced as under:-

Section 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;

5.6 There is no doubt that the, supply of service in the present case satisfies clauses (i), (ii), (iv) and (v) of Section 2(6) of the IGST Act. However to qualify as an export all the conditions must be satisfied and therefore we now take upon ourselves to discuss whether the applicant also satisfies clause (iii) i.e. whether the place of supply in the subject case is outside India. We agree with the applicant that the "place of supply" is relevant to decide the taxability and the status of taxability of the testing services provided by them to their overseas clients and would therefore require detailed examination.

5.7 Section 13 of the IGST Act contains the provisions for determining 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. As per Section 13(2) generally, the place of supply of services shall be the location of the recipient of services except in case of the services specified in sub-sections (3) to (13) of Section 13 of the IGST Act. We agree with the applicant that sub-sections (4) to (13) of the said Section 13 are irrelevant in the present case for the purpose of determination of the "place of supply" of the testing services provided by them to their overseas clients and therefore we restrict ourselves to the provisions of sub-section (3) of Section 13 of the IGST Act which is as under:-

Section 13(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.

5.8 We find that in the subject case the prototypes are made physically available by the recipient of services (the overseas clients) to the supplier of services (the applicant). The applicant is providing testing services on physical product samples i.e. prototypes, made available to them in India by their overseas clients in respect of prototypes after due examination and testing of these prototypes. From a reading of the agreement it is very clear that the testing activities that are carried out include Functional tests, Electrical tests, Mechanical tests, Life cycle tests, Endurance tests, Illumination tests, Environmental tests, Software tests, Product robustness tests, etc. The facts and situation in the present case clearly attract the provisions of Section 13 (3)(a) of the IGST Act and therefore it can be inferred that the said services of testing of the protypes, which are physically made available by the service receiver to the service provider, are provided in India and therefore liable to tax.

5.9 The argument of the applicant is that the services provided by the applicant in this case, as per the agreement, are completed only when the test reports are sent to their overseas clients is not tenable for the

reason that first of all the service of testing provided by the applicant on the basis of examination and physical verification of prototypes is in respect of verification of traits, characteristics and defects, if any, in respect of prototypes sent to the applicant and this service of testing is over once on the basis of examination and verification of prototype, the test report is generated and sent via mail as stated by the applicant and therefore provision of testing service is over and it is clear as per detailed discussions above, that the service is completed and is clearly provided in India.

Thus the event and provision of testing service is over and the service is clearly provided in India as per Section 13(3) of the IGST Act, 2018.

The applicant's main arguments are that the service is completed only when it is used by the applicant in manufacture of goods and their upgradation or removal of defects if any, on the basis of this test report is not sustainable and maintainable as the agreement between the applicant and the service recipient is only with respect to conducting of tests and providing of test report and is not with respect to its further use or otherwise by the service recipient as we can clearly see that even if the findings of test report are not used in any way by the service recipient, it cannot be said that the service of testing is not provided by the applicant to the service recipient as the provision of testing services as per the agreement between them is clearly there whether or not the test report is used by the service recipient. Thus the applicant's argument does not hold any ground and we are of the opinion that in the present case it can safely be inferred from a reading of the provisions of Section 13(3) that the services supply of which has been rendered by the applicant to their overseas client as per the agreement is taxable under IGST Act.

5.10 Further we specifically find that in the SGS case cited by the applicant, the facts are different. In that case the overseas clients of SGS used the services of SGS in inspection/test analysis of the goods which the clients located abroad intended to import from India. The tests were conducted on sample goods and the said goods were not made physically available by their overseas client. In fact the overseas clients would import the goods only after the goods were tested by SGS and a report was sent to that effect. The import would occur only the reports sent were found to confirm that the goods imported complied with requisite specifications and standards. In the subject case the situation is different. Here the overseas client had made the goods physically available to the applicant in order to enable them to conduct the tests. If the goods were not made physically available to the applicants for testing purposes, the tests could not have been conducted and therefore no reports could be generated. Hence it is clear that the facts of the SGA case are different from the facts of the subject matter. It is also seen that the applicant have also cited other case laws but the facts of the cited case laws are different from the facts of the matter at hand and therefore the decisions in those cases cannot be applied to the present case.

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- 12/2018-19/B- 116 **Mumbai, dt.** 15.09.2018

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

Question:- Whether in the facts and circumstances of the case, the Applicant is liable to pay Integrated Goods and Services Tax on the testing services provided to its overseas group entities, being a zero-rated supply?

Answer:- In view of the discussion made under 'Observations' above we hold that the testing services being provided by the applicant in the present case is liable to IGST and cannot be treated as zero rated supply.

PLACE - Mumbai

DATE - 13.09.2019

— sd —

B. V. BORHADE
(MEMBER)

— sd —

PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax. Churchagte
5. Joint commissioner of State tax , Mahavikas for Website.

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