

## 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, (Member)

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id	27AADCM6918M1ZZ
Legal Name of Applicant	DRS MARINE SERVICES PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	506, Great Eastern Summit, 5 <sup>th</sup> floor, Plot No. 56, Sector - 15, CBD Belapur, Navi Mumbai - 400614
Details of application	GST-ARA, Application No. 34 Dated 07.06.2018
Concerned officer	Dy. Commr. of SGST(RAI-VAT-E-008) Raigad Division, Belapur, Navi Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Bonded Warehouse
B Description (in brief)	We have been into selecting and recruiting the shipping personnel on behalf of Foreign Ship Owner. And have been charging Administration fees for the same and paying GST on the Administration charges so received.
Issue/s on which advance ruling required	5 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 DRS MARINE SERVICES PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following issue.

*"Whether GST is applicable on Reimbursement of salary on behalf of foreign entity."*

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 submissions, as reproduced verbatim, could be seen thus-

##### **STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS:**

We are Crew Recruitment & Placement Agency operating from Belapur, Navi Mumbai having GST Regn No. 27AADCM6918M1ZZ. We have been into selecting & recruiting the shipping personnel on behalf of Foreign Ship Owner & have been charging Administration fees for the same & paying GST on the Administration charges so received.

The Reserve Bank of India vide its "Circular no. 15 dated 24.09.2015" has allowed for opening of Foreign Currency Account by Ship Manning/Crew Management Agencies. According to the circular the credit to such foreign currency account would be through normal banking channels from the overseas principal



and the debits would be towards various local expenses in connection with the management of Ships/ Crew in the ordinary course of business. (A copy of the said RBI Circular is attached herewith for ready reference).

In view of the said RBI Circular, our principal has requested us for disbursement of salary to the crew members from our side. For this the principal would be transferring the sum of total salary to us and we will be disbursing the salary to the crew member through banking channels into their respective accounts. For this activity we would be charging/ invoicing service charges to the principal and on the said charges we would be discharging our GST liability.

In view of Rule 33 of the Central Goods and Service Tax Rules, 2017, the expenditure or costs incurred by a supplier as a Pure Agent of the recipient of supply shall be excluded from the value of the supply. Since the activity would be done on behalf of the Foreign Principal and we would not be deducting any charges from the amount of salary received for disbursement, the amount so remitted towards disbursement of salary would not be taxable under GST in view of provisions of Rule 33 of the CGST Rules, 2017.

Therefore we would be carrying out the said activity, after amending our contract with the principal. If anything contrary to the said provisions exists, kindly let us know so that we are able to properly follow the Rules and correctly pay the taxes.

### **STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED**

#### **Opening of foreign currency accounts in India by ship-manning/ crew management agencies**

Attention of Authorised Dealer Category-1 (AD Category - 1) banks is invited to Regulation 6 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 notified vide Notfn No. FEMA 10/2000-RB dtd May 3, 2000, as amended from time to time, & A.P. (DIR Series) Circular No. 48 dtd April 30, 2007, in terms of which general permission is available to ship-manning/ crew management agencies that are rendering services to shipping/ airline companies incorporated outside India, to open, hold and maintain non-interest bearing foreign currency account with an AD Category - I bank in India for meeting the local expenses in India of such shipping or airline company.

2. With a view to ensuring strict compliance, our guidelines on the operations in such foreign currency accounts opened with AD Category-I banks by foreign shipping or airline companies or their agents in India are reproduced below:

a) Credits to such foreign currency accounts would be only by way of freight or passage fare collections in India or inward remittances through normal banking channels from the overseas principal. Debits will be towards various local expenses in connection with the management of the ships / crew in the ordinary course of business.

b) No credit facility (fund based or non-fund based) should be granted against security of funds held in such accounts. c) The bank should meet the prescribed 'reserve requirements' in respect of balances in such accounts.

d) No EEFC facility should be allowed in respect of the remittances received in these accounts.

e) These foreign currency accounts will be maintained only during the validity period of the agreement.

3. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

4. The directions contained in this Circular have been issued under Section 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

### **03. CONTENTION - AS PER THE CONCERNED OFFICER**

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

The taxable person M/S DRS MARINE SERVICES PVT. LTD has approached your good offices for an advance ruling to determine liability to pay tax on a transaction of service. In context of this application it is submitted that-

The applicant DRS MARINE SERVICES PVT. LTD is a company incorporated under the Companies Act, 1956 having its registered office at Mumbai, Maharashtra.

The Applicant's nature of services are Manpower Recruitment Services (HSN Code: 99851).

The applicant was providing services of manpower recruitment to M/s RMS Ltd, Bermuda. The applicant wef 05-07-2018 by way of addendum provides further services.

The additional Services and Fees are being incorporated as an addendum as follows:

2. Fee



2.4 Cost related to Training/Briefing, Interviews in other Cities etc will be invoiced once approved on actual basis.

2.5 A Fix fees of US \$ 1250.00 per month will be charged as service charges towards disbursement of salaries.

2.6 GST as applicable.

3. Salary Reimbursement of Crew members.

RMS will transfer Salary of Crews to DRS "SFC A/C" as a single remittance, and DRS will instruct the bank to disburse the Crew Salary as per list provided by RMS to respective bank Accounts of Crew members.

4. Reimbursement of Travel Cost

4.1 DRS will arrange travel for Officers/Crew for RMS subject to fare approval.

4.2 Travel Agency will raise invoice to RMS C/O DRS.

4.3 DRS will pay to travel agencies for and on behalf of RMS.

4.4 Monthly Reimbursement bill towards travel cost will be raised by DRS to RMS.

The applicant has raised following query:-

Qs. N	Questions raised by the applicant	Submission as per ACT & RULE
B	Whether GST liability is applicable only/ purely on DRS Marine Commission and not on Salary amount which we are supposed to receive in DRS-SFC A/C for disbursement?	<p><b>Rule 33.</b> Value of supply of services in case of pure agent.- Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be <b>excluded from the value of supply, if all the following conditions are satisfied</b>, namely,- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient; (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account. Explanation.- For the purposes of this rule, the expression "pure agent" means a person who- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the <b>course of supply of goods or services or both</b>; (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply; (c) does not use for his own interest such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.</p> <p><b>Comments:</b> As per the details provided by the applicants and Rule 33 of the CGST Rule 2017, the salary should not be taxable under GST as the applicant is giving instruction to the bank and acting as Agent only on behalf of their Foreign principal. The applicant in this case does not provide manpower to M/s RMS Ltd but provides service for recruiting the manpower. The personnel involved are the employees of M/s RMS to whom now the applicant will disburse the salaries by giving necessary instructions to the bank, having an account of applicant in which M/s RMS Ltd will transfer the salaries of crew members as a single remittance.</p>



#### 04. HEARING

The case was taken up for Preliminary hearing on dt. 04.07.2018 when Sh. Mukund Pol, C.A. along with Sh. R. S. Bajwa, Director appeared & requested for admission of application as per contentions in their ARA. They were requested to provide copies of contracts that they were

having with RMS in respect of recruitment services and salary transfer services or contract of any other nature as applicable. Jurisdictional Officer, Ms. R. S. Iyer, State Tax Officer appeared and stated they have made written submissions.

The application was admitted and called for final hearing on 01.08.2018. Sh. Mukund Pol, C.A. along with Sh. R. S. Bajwa, Director appeared and made oral and written submissions. Jurisdictional Officer, Sh. Avinash Shinde, Dy. Commr of SGST appeared and made written submissions.

**05. OBSERVATIONS**

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the department.

The applicant is a Crew Recruitment and Placement Agency, and are involved in selecting and recruiting shipping personnel on behalf of their principal/client who is a Foreign Ship Owner and for which they are charging Administration fees and paying GST on such Administration charges so received. The applicant has submitted that their principal has requested them for disbursement of salary to the crew members from the applicant's side, for which the principal would be transferring the sum of total salary to the applicant who in turn will be disbursing the salary to the crew member through banking channels into their respective accounts. For this activity, the applicant would be charging/ invoicing service charges to the principal and on the said charges they would be discharging their GST liability.

Applicant has further submitted that the above said activity of distributing salaries would be done on behalf of their Foreign Principal & they would not be deducting any charges from the amount of salary received for disbursement. Hence, they have contended that, the amount so remitted towards disbursement of salary would not be taxable under GST in view of provisions of Rule 33 of the CGST Rules, 2017.

The applicant has submitted that as per Regulation 6 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 notified vide Notification No. FEMA 10/2000-RB dated May 3, 2000, as amended from time to time, and A.P. (DIR Series) Circular No. 48 dated April 30, 2007, general permission is available to ship-manning/crew managing agencies that are rendering services to shipping/airline companies incorporated outside India, to open, hold and maintain non-interest bearing foreign currency account with an AD Category - I bank in India for meeting the local expenses in India of such shipping or airline company.

The question raised by the applicant is connected with their agreement that they have entered into with M/s Reefership Marine Services Limited (RMS), situated in Bermuda, i.e. outside India. The agreement made on the 01.11.2003 between the applicant and RMS, has been



submitted by the applicant and by way of which the applicant would assist RMS to hire officers of Indian Nationality for their vessels. As per the agreement the applicant would assist RMS in the selection of qualified Senior/Junior officers for employment on board vessels as when required by RMS, for which they would be paid a certain fee to cover the administrative costs and mobilization expenses and they would also be paid 'communication costs'. Vide the proposed Addendum #5 an amendment has been proposed and one of the amendments, under point no. 3 of the Addendum#5 submitted by the applicant at page 11 of their submissions dated 13.07.2018 is as under:-

**"3. Salary Reimbursement of Crew Members**

*RMS will transfer Salary of Crews to DRS "SFC A/C" as a single remittance, and DRS will instruct the bank to disburse the Crew Salary as per list provided by RMS to respective Bank Accounts of Crew Members.*

*At point 2.5 of the said addendum it is mentioned that "a fix fees of US\$ 1250.00 per month will be charged as service charges towards disbursement of salaries inclusive of GST applicable".*

From a reading of points 2.5 and 3 of the Addendum #5 submitted by the applicant it is clear that the Salary of Crews of RMS will be deposited in the account of the applicant in one go and the same will be transferred from the applicant's account directly to the bank accounts of the Crews, by the bank, on the directions of the applicant. Here we find that the entire amount received by the applicant from RMS towards salary of crews is disbursed as such. Hence with respect to this transaction it is crystal clear that the applicant is acting as a pure agent of RMS. Here it is to reiterate that the amounts that are to be transferred to this account have to be genuinely in respect of salary of crew as discussed and no other amounts which are not authorized and due as salary can be handled through this account by the applicant.

We find that Rule 33 of the GST Rules would cover these types of transactions and is reproduced as under:-

*Rule 33. - Value of supply of services in case of pure agent.- Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-*

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

*Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-*

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*



- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

From the above provisions of Rule 33 and the facts of the proposed transaction explained by the applicant, we find that the applicant will be acting as a pure agent of RMS in as much as the entire amount received by them as Crews' Salary will be disbursed to the Crew and no amounts from the said receipt will be used by the applicant for his own interest. In fact, for performing as a pure agent they will also be receiving compensation separately in the form of fixed fees to be charged as service charges.

In view of the above we are of the opinion that the applicant will not be liable to pay GST on Salary amount received from RMS and disbursed to the Crew.

05. 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- 34/2018-19/B-

99

Mumbai, dt. 24.8.2018

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

**Question :- Whether GST is applicable on Reimbursement of salary on behalf of foreign entity.**

**Answer :- Answered in the negative as per detailed facts of the present case discussed above.**

PLACE - Mumbai

DATE - 24/8/2018



—sd—  
B. V. BORHADE  
(MEMBER)

—sd—  
PANKAJ KUMAR  
(MEMBER)

**CERTIFIED TRUE COPY**

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
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, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021

  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**