

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING FOR THE STATE
OF HARYANA, FOR GOODS AND SERVICES TAX, PANCHKULA**

Appeal case No. HAR/HAAAR/2018-19/02

dated : 22.11.2018

GSTIN Number	06AACCE9909R1ZX
Legal Name of Appellant	M/s Esprit India Private Limited
Registered Address/Address provided while obtaining user ID	M/s Esprit India Private Limited, Building No. 9B, 16 th Floor, DLF Cyber City, Phase-III, Gurgaon, Haryana-122002
Appellant represented by	Sh. Nitin Agrawal, Power of Attorney Holder, M/s Esprit India Pvt. Ltd.
Department represented by	Sh. Amreshwar Gautam, Asstt. Commissioner Sh. S.K. Saini, Jt. Director(Legal)

Order under Section 101 of the Central Goods and Services Tax Act, 2017/the Haryana Goods and Services Tax Act, 2017.

The present appeal has been filed under Section 100 (1) of the Central Goods and Services Tax Act, 2017/the Haryana Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and HGST Act respectively"] by M/s Esprit India Private Limited [hereinafter referred to as the "Appellant"] against the Advance Ruling No. HAR/HAAR/R/2018-19/6, dated 11.04.2018.

A copy of order dated 11.04.2018 of the Advance Ruling Authority was received by the appellant on 12.07.2018 and the appeal has been filed on 13.08.2018 which is in time. (11-12.08.18 being holidays)

BRIEF FACTS OF THE CASE

1. The appellant namely M/s Esprit India Pvt. Ltd. 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.

2. EDCFE has engaged Esprit India Pvt. Ltd. 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 Pvt. Ltd. in terms of which Esprit India Pvt. Ltd. has undertaken to provide various sourcing support services to EDCFE in relation to performance of the obligations under EDCFE's contract with Esprit Germany.

3. Under the agreement, Esprit India Pvt. Ltd. is appointed by EDCFE to provide services to EDCFE in relation to goods and merchandise including wearing apparel,

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shoes & accessories and fabric. A brief description of the functions/responsibilities of EDCFE and Esprit Germany and Esprit India Pvt. Ltd. is listed below:

Sr. 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 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 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 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	Esprit India based on the guidelines received from EDCFE conducts quality checks at

		control procedures to be adopted during manufacturing, stock keeping in warehouse and transportation.	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.	Involving 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.

After notice and opportunity, the Advance Ruling Authority passed the impugned order. Being aggrieved with the impugned order dated 11.04.2018, the appellant M/s Esprit India Private Limited has filed the present appeal.

Pleadings

Of the Appellant

The present appeal has been filed on the following grounds:-

- A. Impugned Order lacks application of mind and is non-speaking. Various submissions of the Appellant were conveniently ignored by the Learned Authority for Advance Ruling (Ld. AAR).
- B. The support services provided by the Appellant were composite supply and could not be vivisected into different categories.
- C. The Ld. AAR had arbitrarily and erroneously held that the questions asked by the Appellant were out of the scope of the Section 97(2) of Central Goods and Services Tax Act 2017 (CGST Act) /Haryana Goods and Services Tax Act 2017 (HGST Act) and the questions could not be taken up by the AAR due to lack of jurisdiction.
- D. Services provided by the Appellant were not 'intermediary' services.
 - . The Appellant in no manner 'arranged' or 'facilitated' sale of Goods from vendors in India to Esprit Germany
 - . The Appellant does not qualify as an 'agent' or a 'broker' for EDCFE
- E. The services performed by the Appellant are in nature of "support services"

- F. Services in the present case are indeed exported. Services provided by the Appellant would qualify as 'exports' in terms of Section 2 (6) of Integrated Goods and Services Tax Act 2017 (the IGST Act).
- G. The remuneration of the Appellant for support services to EDCFE is independent of purchase of goods by Esprit Germany from India.
- H. The Ld. AAR has erred both in law and facts while passing the Impugned Order on assumptions and presumptions which is against the facts and the provisions of law.

Sh. Nitin Agrawal, Power of Attorney, is present today on behalf of the appellant M/s Esprit India Private Limited. He has reiterated the grounds taken in the memorandum of appeal.

It is pleaded that the Ld. AAR has not applied mind while passing the impugned order and the order is non-speaking. The appellant is providing services under the sub sourcing agreement between the appellant and the EDCFE, for which the appellant only charges a lump sum consideration from EDCFE and as such the services provided by the appellant are composite supply. It is argued that the AAR has wrongly given findings that the questions asked by the appellant are out of the scope of section 97(2) of CGST/HGST Act. It is pleaded that the services provided by the appellant are in the nature of support services. The appellant pleaded that his services fall in the ambit of export services treating the same as zero rated supply of services.

In support of his arguments, Sh. Nitin Agrawal has referred to following judgments of the Hon'ble Courts and the decisions of the Authorities under the Goods and Services Tax Act:-

1. CST v. Ernst & Young Pvt. Ltd., 2014 (34) S.T.R. 3(Del.)on_25-February 2014.
2. Commissioner of Service Tax, New Delhi v. Menon Associates (2015 77 VST 168 Del.)
3. Commissioner of Service Tax, Bangalore v. Menon Associates (2015 77 VST 168 Del.)
4. Sunrise Intermediary services-case law.
5. ARA ruling Global Reach Education 2018-VIL-06-AAR]WB_2017-18_02 (West Bengal)
6. AAR ruling Gogte Infrastructure Development Corporation Ltd. (2018-VIL-30-AAR02) Karnataka.
7. Evalueserve.com Pvt. Ltd. V.CST, Gurgaon 2018 ACR 390 CESTAT Chandigarh.

With these arguments he pleaded that the impugned order of Ld. AAR may be set aside.



Of the Department :

The representatives of CGST/HGST Authorities have defended the impugned order, stating that the Authority for Advance Ruling has passed a detailed and self-speaking order answering all the questions raised by the appellant in his application. It is pleaded that the AAR has rightly answered all the three questions covered within the ambit of Section 97(2), wherein the Act has limited the powers of Authority for Advance Ruling. In this regard, they have referred Section 97(2) which is as under:-

“(2) The question on which the advance ruling is sought under this Act, shall be in respect of, -

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether 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.”

To controvert the cited authorities of other States, it is pleaded by the department that the same are not binding on the appellant and in support of this argument, the provisions of Section 103 have been referred to, which read as under:-

“103. (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only-

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling.
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.”

It is argued that the Question No. 1 raised by the applicant/appellant has rightly been answered by the AAR and Questions No. 2 and 3 (of the applicant/appellant) have also been rightly refused because they do not fall within



the ambit of Section 97(2) of the CGST/HGST Act. With these arguments, it is prayed that the impugned order of AAR is legal which deserves to be sustained.

We have heard both the parties in detail, and have also perused the record of the case. The case laws cited by the appellant have also been gone through.

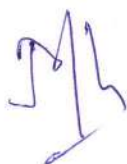
It is observed that the appellant is side tracking the facts by submitting that the appellant is not an agent or broker, as no such question was asked before the AAR. The appellant had requested for advance ruling on the following questions :-

- (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.

The Id. AAR has answered all the Questions raised, in term of relevant provisions of the GST Act and by giving detailed reasons. The plea of the appellant, that the AAR has given SAC & description alongwith tax rate which was not asked for, does not hold water because AAR has clarified each and every aspect raised in the application for Advance Ruling by giving self-explanatory findings. Thus the arguments raised by the appellant are untenable.

The case laws cited by the appellant are distinguishable as the facts and circumstances of the present case are different. The appellant has himself admitted that he has been providing services to the Esprit Germany in terms of the contract between Esprit Germany and Esprit Hong Kong and for that purpose an agreement was made between Esprit Hong Kong and Esprit India (appellant). The appellant is providing the services of market research and assisting in trade mark protection, identification of supplies and inspection and quality control of the goods/services. Therefore, we find that the AAR has rightly identified the SAC description with rate of tax while answering Question No. 1 raised by the appellant. We have carefully perused the provisions of Section 97(2) of the CGST/HGST Act which deal with the subject on which Advance Ruling could be given. After perusing the provisions of Section 97(2) and going through the findings of AAR, we are of the view that Question 2 and 3, raised by the applicant, have rightly been declined by the AAR.

In view of the above discussions and findings, we have no hesitation in

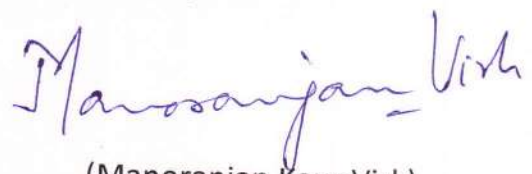


dismissing the appeal and the Advance Ruling dated 11.04.2018 does not suffer from any infirmity or illegality and the same is upheld.



(Amit Kumar Agrawal)

Member



(Manoranjan Kaur Virk)

Member