

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER No. MAH/AAAR/SS-RJ/11/2018-19

Date- 23.10.2018

BEFORE THE BENCH OF

- (1) Smt. Sungita Sharma, MEMBER
(2) Shri RajivJalota, MEMBER

GSTIN Number	27AAAFF0535H1ZT
Legal Name of Appellant	Five Star Shipping
Registered Address/Address provided while obtaining user id	610, Vindhya Commercial Complex, Sec-11, C.B.D. Belapur, Navi Mumbai- 400 614
Details of appeal	Appeal No. MAH/GST-AAAR-11/2018-19 dated 27.07.2018 against Advance Ruling No. GST-ARA-18/2017-18/B-26 dtd. 18.04.2018
Concerned officer/Jurisdictional Officer	State Tax Officer, C-104, 2nd Floor, Room No. 205, Komkan Bhavan, Navi Mumbai.

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 Five Star Shipping (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-18/2017-18/B-26 dated 18.04.2018.

BRIEF FACTS OF THE CASE

A. Five Star Shipping (hereinafter referred to as "Appellant") is a partnership firm in terms of (Indian) Partnership Act, 1932. Its office is located in Mumbai (State of Maharashtra). Its partnership deed *inter alia* records that the partnership business shall be that of consultants.

B. The service by the Appellant essentially includes collecting market intelligence information and updates which is directed to the ship owners engaging the Appellant.



This is the principal service of the Appellant and is known as Consultancy Service. Separately, service provided by the Appellant also includes providing Support Service to Indian/ foreign ship owners so as to identify charterers who are seeking to optimise revenue for their vessels and monitoring voyage execution, which is the ancillary service offering of the Appellant. Consultancy Service and the consequential Support Service provided by the Appellant are generically referred to as Marine Consultancy Service ("MCS") together by the Appellant.

- C. MCS is provided by the Appellant in terms of a typical Consultancy Agreement executed by and between the Appellant and the ship owners. Details of service provided by the Appellants are provided in the Annexure attached to the agreement entered with FSO.
- D. This appeal (as also the Application for Advance Ruling) concerns only supplies made to overseas clients known as Foreign Ship Owners ("FSO") and is accordingly limited and worded.
- E. MCS service of the Appellant is provided to the FSOs who wish to have and therefore seek out potential employment (charterers) for their vessels. Entire engagement between the Appellant and FSO is on principal to principal ("P2P") basis and has the essential nature of consultancy, that is, provision of market intelligence/ information.
- F. For the provision of MCS (which is always comprehensively rendered, that is, the Appellant renders Consultancy Service and Support Service bundled together) Appellant has employed resources which *inter alia* include management professionals, master mariners and chartered accountants. These professionals analyse market data available to them through the internet and other reliable trade resources or by projections. Such data is then converted into meaningful reports which help FSO in business decisions i.e. to maximize revenue and employment of its vessels.
- G. Fees for provision of MCS become payable to Appellant upon conclusion of agreement between the FSO and successful employment with the potential charterers identified by Appellant or otherwise, and completion of support activities. Only then has all contractual obligations of Appellant been completed.
- H. As per the ever evolving and highly competitive industry, fees are payable upon conclusion of the contract i.e., it is paid upon the agreed additional support services, lay time calculations, etc. being provided to FSO by the Appellant.



- I. As an industry and market practice, fee is a percentage of revenue, which has been contractually agreed between the FSO and the charterer. This arrangement is premised on concept of value added service i.e., 'no contract' will result in 'no fee'.
- J. No state level taxes were applicable on the service offerings of MCS by the Appellant. The Appellant had obtained Service Tax registration as per the erstwhile indirect tax regime in the State of Maharashtra. MCS service provided by the Appellant to FSO and Indian ship owners qualifies as Business Auxiliary service ("BAS") in terms of Chapter V of the Finance Act, 1994 ("the Act"). Hitherto, MCS provided by the Appellant was treated as "bundled service" comprising of Consultancy Service and Support Service, wherein Consultancy Service was the principal service giving essential characteristics to MCS. These services not covered under a specific rule of the Place of Provision of Service Rules, 2012 ("PPSR"). Therefore, Rule 3 of the PPSR that is, default rule under the PPSR was applicable. As per Rule 3 of PPSR, the place of provision of service was 'the place of recipient of service'. Therefore, the place of provision of service was the place of FSO, which was outside India.

Tax treatment under GST

- K. The Appellant is providing MCS to both Indian and FSO. There is clarity regarding the GST implication on service provided to Indian ship owner as both provider and recipient of service are located in India however, there is inadequate clarity regarding the GST implication on services provided to FSO (located outside India). Therefore, the Appellant approached the Authority for Advance Ruling ("the Authority") by filing an application requesting Advance Ruling on January 19, 2018 regarding MCS provided by the Appellant to FSO. The Appellant sought an Advance Ruling from this Hon'ble Authority in respect of the composite supplies of MCS by the Appellant to FSO. Specifically, the advance ruling is sought on the following questions:
- A.1 Whether MCS provided to FSO constitutes "composite supply" with the principal supply of consultancy service?
- A.2 Whether MCS provided to FSO will qualify as an export of service in terms of Section 2(6) of the IGST Act as the place of supply of MCS (as a composite supply) will be determined in terms of Section 13(2)(a) of the IGST Act, i.e. the 'location of recipient of service'?



- B.1 In the alternate, where services are provided to FSO distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:
- Whether consultancy service will qualify as business consultancy service in terms of the scheme of classification of services [Annexure to Notification 11/2017 – Central Tax (Rate), dated 28th June, 2017 (“the Notification”)]?
 - Whether the place of supply of such consultancy service will be the ‘location of recipient of service’ in the terms of Section 13(2)(a) of the IGST Act?
 - Whether support service qualifies as “intermediary service” in terms of Section 2(13) of the IGST Act? And, if ruled that the support service qualifies as intermediary service, the place of supply of support service as intermediary service will be the ‘location of supplier of service’ in terms of Section 13(8)(b) of the IGST Act?
- L. Vide its Order dated April 18, 2018 (‘Impugned Order’), issued under Section 98 of the CGST Act and Maharashtra Goods and Service tax Act, 2017 (‘MGST Act’), the Authority has, basis the findings recorded in the Impugned Order, answered Question 1 and Question 2 in the negative and declared that the MCS service provided by the Appellant does not constitute “composite supply” and the Consultancy Service provided by the Appellant does not qualify as “business consultancy service” in terms of the scheme of classification of services provided in Notification No. 11/ 2017 – Central Tax (Rate) dated 28th June, 2017. As regards Question 3, the Authority has held that the Support Service provided by the Appellant qualifies as “intermediary service”.
- M. Aggrieved by the Impugned Order, the Appellant is filing the present Appeal, on the following grounds which are without prejudice to one another.

GROUND OF APPEAL

- The grounds of appeal are set out in detail herein after, which are taken in the alternative and are without prejudice to one another.

The supply of MCS by the Appellant constitutes ‘composite supply’ with the principal supply of Consultancy Service



2. The Appellant is an Indian service provider who provides supply of MCS service to foreign parties known as FSOs. The offering of MCS service by the Appellant is in the form of composite supply of services with the principal supply being Consultancy Service. The Support Service provided by the Appellant is in conjunction with the Consultancy Service rendered by it. Therefore, the offering of MCS service by the Appellant can be said to be the offering of two services in conjunction with each other, which are naturally bundled together.
3. It is submitted that in the facts and circumstances of the present case, the impugned findings that the supply of MCS by the Appellant would not constitute a "composite supply" with the principal supply being the supply of Consultancy Service, is completely erroneous and unsustainable. From 01st July, 2017 (GST regime), all forms of supply of service made for a consideration by a person in the course of furtherance of business qualifies as supply which is liable to GST in terms of Section 7(1)(a) of the CGST Act unless exported or exempted. Where two or more services are provided by a supplier in conjunction, GST law has continued the concept of composite supply and mixed supply as was given in Service tax law. A composite supply in terms of Section 2(30) of the CGST Act is defined as a supply of two or more services which are 'naturally bundled' and supplied in conjunction with each other in the ordinary course of business, one of which is the 'principal supply'.
4. A composite supply is defined in Section 2(30) of the CGST Act as below:

*"Section 2(30) - "composite supply" means a supply made by a taxable person to a recipient **consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply"***

5. The concept of composite supply is similar to the concept of 'naturally bundled service' under the erstwhile negative list regime. Appellant is supplying MCS to the FSO which is a composite supply of **Consultancy Services and Support Services (may include services for or completing employment) which are inherently tied up (bundled) and integrally enjoined, as a commercial offering. Consultancy Service rendered by the Appellant to FSO consists of the following services:**
 - i. *As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to the company.*



- ii. *Track, collate, analyse and monitor port development and logistics data originating from reliable source and update future trends*
- iii. *Monitor world-wide economic development, bulk commodity trade pattern development*
- iv. *Identify and provide information on port costs, bunker (fuel), trend, cost estimation and analysis*
- v. *Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, global and regional economic development and analysis*
- vi. *Techno commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict, any other causes which have prospects to impact trade*

6. The foregoing services are provided as a single offering of Consultancy Service, failing which the provision of service will not be meaningful. Consultancy Service helps the client (i.e. FSO) with market intelligence and trade analysis, etc. which helps them in identifying potential charterers and thereafter zeroing on one or more such potential charterers. Thus, the Consultancy Service provided by FSO in tune helps the FSO to augment its business and expand its client base and all these services are provided as one service.
7. Support Services, on the other hand, provided by the Appellant to FSO (client) is a relatively newer offering, and a requirement emerging in recent times as markets became more competitive. This offering is usually at the end of the employment of vessel and involves Appellant merely monitoring voyage execution, examining the lay time calculations and arranging for reconciliation of accounts to crystalize receivables of FSO. Occasionally, support may involve postal or ministerial acts of transmitting messages between FSO and charterer. Yet at all times services are directed at, at insistence of and for benefit of FSO alone.
8. The Appellant can thus be considered as a service provider who supports FSOs in identifying, sourcing and procuring business and thereafter, smoothly concluding it. Therefore, the service provided by the Appellant is on an 'end to end' basis.
9. The Appellants are engaged by the FSOs to provide MCS service by which they gain valuable information which will be beneficial to their business and, will also be helpful in identifying potential charterers. MCS service, consisting of Consultancy Service and Support Service is supplied together to the FSO, in conjunction as one bundle of



service. Conjunction means "condition of being joined". MCS supplied by the Appellant is joined together where Consultancy Service is provided at the time of initiation of service by the Appellant to the FSO and Support Service is provided at the end of supply at the time of completion of employment of the FSO by the charterer. The Appellant has appointed numerous research analysts to undertake market research, track, collate, analyse the geo-political situation, suggest a suitable rate for the transaction and monitor port development. No FSO separately ever seeks provision of Support Service although academically it is possible. It has not been appreciated that MCS has evolved over a period of time and Support Service is typically provided as value addition to the FSO. Consultancy Service, in the ordinary course of business is provided in tandem with Support Service as a value addition and this is the industry practice.

10. One of the service provided by the Appellant amidst the gamut of service is the principal supply or the main/ primary supply. In case of the Appellant, the principal or the primary supply by the Appellant is the Consultancy Service which helps the FSO to initiate business by finding business and the Support Service is ancillary service which is provided at the time of closure of service when the Appellant is called upon to calculate lay time, etc. and help FSO to close its service provided to the Charterer. Both Consultancy Service and Support Service is provided to and for FSO on P2P basis and the Appellant has no wherewithal with the Charterer or paid by the Charterer.
11. Therefore, supply of MCS by the Appellant consisting of Consultancy Service and Support Service will have to be construed as a supply of composite service made by the Appellant as these services (i.e. Consultancy Service and Support Service) are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which (i.e. Consultancy Service) is the principal supply.
12. The term 'naturally bundled and supplied in conjunction with each other in the ordinary course of business' is not defined in CGST Act or IGST Act but this concept has been carried forward from the Service tax law. Reference is therefore made to taxation of Services: An Education Guide (June 20, 2012), which provides that to demonstrate that a service is supplied in conjunction with each other in the ordinary course of business, the supply of services should meet some of the following criterion which are indicative, not conclusive and in fact satisfied by the Appellant:
 - **The perception of the recipient of service** i.e., a large number of service receivers expect these services to be provided as a package. Appellant is providing the



service as a package as the FSO prefers to engage with one service provider to receive gamut of services which augments their business and it is convenient to pay singular consideration which is a percentage of the value of freight received by the FSO.

- **Majority of similar service provider in the industry provide similar bundle of service.** Service provided by Appellant to FSO has an evolving nature. Previously, given the market scenario the requirement was only to find charterers, however, post global financial crisis about a decade ago and emerging commercial dynamics in a shrinking global village, there is an increase in competition and service expectation by the FSO thus, Consultancy Service is being provided with other value-added services. The FSO engages Appellant for Consultancy Services and subsequent Support Service usually provided in tandem. Appellant is now engaged in cross border supply of service using latest technology and methods. More than domestic industry, Appellant must compete on global platform to international standards to meet FSO requirements.
- **One service is the main service** and other services provided in the bundle are incidental or ancillary to the main service. As discussed above, Consultancy Service provided by Appellant to FSO supplements its business viability and profitability. Appellant's advice on vessel positioning, bunker trends, commodity market, etc. helps FSO to reach out to potential charterers which is the main objective of FSO's business. Once FSO enters into a contract with the charterers, Appellant is also called upon to provide Support Service in relation to the voyage. Therefore, without Consultancy Service FSO will not be able to efficiently contract with potential charterers and provide services and Appellant may not be called upon to provide Support Service. Rather, practically and anecdotally, it has never been the case where Support Service is given alone and without Consultancy Service.
- **The service recipient pays single price** regardless of the services within the package, Appellant is obliged to provide all services under the Agreement including the Consultancy Service and Support Service. These services are provided by Appellant to and for FSO on need basis. MCS is never provided to or for Charterer and fee for MCS is only paid by the FSO. This is another important indicator of the perception in Service recipient's minds that fee is payable for a consolidated offering.
- **Elements are normally advertised as a package.** Appellant in all cases enters into an agreement with FSO to provide MCS consisting of Consultancy Service and Support Service. Appellant is not a conduit between the FSO and the Charterer. Generally, as discussed above, change in industry dynamics post globalization and



increased competition both domestic and overseas, has made it necessary for Appellant to provide the entire gamut of service as a package.

- **Different elements not available separately.** Neither FSO approach Appellant to provide only Consultancy Service or only Support Service, nor is the Appellant able to or actually engaged to provide each of the elements of service separately. In fact, the Appellant has in the past not provided these two services separately and always provided these conjointly. The FSOs (industry) require, generally, the provision of services (MCS) as a bundle of service being based outside India and owing to this expect Consultancy Service and Support Service together as MCS and as a result it is commercially inexpedient for Appellant to so offer it.
- **Different elements are integral to one overall supply.** Service recipient's end objective is employment of vessel. Appellant provides Consultancy Service to FSO. The information disseminated by Appellant under Consultancy Service is used by FSO for employment of vessels. Once FSO itself fixes the charterer, Appellant is required to provide Support to FSO by enabling conclusion of the transaction inasmuch as reconciliation and calculation of lay time to receive charter hire earnings for the employed vessel. Thus, the supply is intrinsically linked and are integral to one another and so clearly in conjunction.

13. The Education Guide on Service tax which has also been referred in the GST flyer issued by the Central Board of Indirect Tax and Customs ("CBIC") on Composite Supply and Mixed Supply and has been extensively relied upon by the Authority in the Impugned Order provides the following:

"Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate"

14. The Impugned Order has disregarded the submissions made during the personal hearing wherein the authorized representative has elaborated on how the provision of MCS has matured over the past decades and now, it is a normal as also frequent business practice to supply the Consultancy Service and Support Service together as MCS. Consultancy Service is not sought or applied in isolation by the FSO, which makes it redundant for the Appellant to offer it independently. All FSO's prefer and all supplier of service offer Consultancy Service bundled with Support Service which has now become new normal market practice, followed by all similarly placed suppliers.



15. The Impugned Order places a misconstrued reliance on the 'Independent Contractor Status' clause of the sample Consultancy Agreement dated 01.03.2017 ("Agreement") to conclude that the supply of MCS by the Appellant would not constitute "composite supply" with the principal supply of service being supply of Consultancy Service. The Impugned Order's observation regarding the perception of the FSO is completely flawed. In this regard, the Impugned Order provides that the perception of the FSO is that the services listed in Exhibit A of the Agreement need not be bundled and could be performed by different service providers or from his staff too. This observation is in complete contrast to the prevailing market practice surrounding transactions of this kind. The general practice is that an FSO avails Consultancy Service and Support Service bundled together as MCS from the same supplier as it increases effectiveness and helps in cost economization.
16. Further, the Agreement annexed shows the general arrangement between parties in transactions of this nature and is the standard form of contract employed by the industry for transactions of this nature. The Authority has acted in an arbitrary manner by resorting to an isolated reading of the "Independent Contractor Clause" present in the Agreement to determine whether the MCS service supplied by the Appellant would qualify as "composite supply" or not. The Authority has failed to apply its mind soundly to the issue at hand by not taking into consideration the legal principle that a contract must be looked at as a whole to ascertain the business meaning attributed to it by the. Reliance in this regard can be placed on **Mumbai Metropolitan Region Development Authority v. Unity Infraproject Ltd. 2008(5) Bom CR 196**. In this case, the Hon'ble Bombay High Court has held that-

Para 11

"In interpreting a contract, the Court cannot place emphasis on an isolated provision divorced from the context and unrelated to the other provisions which govern contractual obligations. Contracts represent business understandings between the parties. Commercial dealings between persons who are well versed in the transaction of business are regulated by contracts which parties opt to govern themselves. The law regulates those contracts and provides an ordered framework in which business dealings can be implemented. The duty of the Court when called upon to assess where the balance lies in a contractual dispute, is to read the contract as a whole in order to understand the business meaning which the parties attributed to their obligations. Interpretation in law must ensure in commercial matters that the view which the Court takes records the sense which the parties to an arms length transaction attribute to the terms which they incorporate. The law is not divorced from business realities nor can



the vision of the Judge who interprets the law be disjointed from the modern necessities to make business sense to business dealings.

17. The supplier of MCS begins by supplying Consultancy Service to the FSO to find a potential charterer and thereafter at end of its bouquet offering provides services like tracking of voyage and assistance in billing of the FSO and charges a unified consideration with respect to the services provided. This practice of charging a unified consideration for the provision of services naturally bundled together is in consonance with the GST flyer titled "Composite supply and Mixed Supply", which has been extensively, yet selectively relied upon by the Appellant. The GST flyer provides that one of the indicative illustrators of bundling of service in the ordinary course of business is whether "there is a single price, or use the customer pays the same amount, no matter how much of the package they actually receive or." It is clear from the facts of the present case that the Appellant charged a unified consideration for supply of two services bundled together as MCS service to the FSO. Further, it is relevant to note that even though the clause on 'Independent Contractor Status' of the Agreement permits the FSO to opt out from any of the service offered under the Agreement, this does not alter or reduce the consideration which is charged by the Appellant from the FSO. Regardless of this option given to and opted by the FSO, the FSO remit the consideration agreed under the Agreement and availing of such option by the FSO does not affect the consideration that he is obliged under the Agreement to pay to the Appellant. The Impugned Order has failed to appreciate and factor this aspect in its findings, thereby rendering the Impugned findings unsustainable.
18. Without prejudice, it is relevant to note that the Authority has concluded that the Agreement is in respect of a particular contract (MV AM OCEAN PRIDE/ MARUBENI CEMENT CHARTER PARTY CONTRACT DATED 3RD MARCH 2017) and not a general agreement. Therefore, a generalization regarding the perception of an FSO on the basis of the clause on 'Independent Contractor Status' present in the Agreement was uncalled for and is flawed and bad in law for this reason. In this regard, the Appellant is submitting another sample agreement entered between the Appellant and an FSO which too is a template agreement that the Appellant enters into with the FSOs.
19. At any rate, the Authority ought to appreciate that the intention behind the transaction is relevant to ascertain the true nature of an agreement. The words of an agreement must not be construed in such a manner as to defeat the intention of the parties involved in the transaction. Reliance in this regard can be placed on the following decisions:



- i. ***N.M. Goel and Co. v. Sales Tax Officer, Rajnandgaon and Ors, 1988(38) ELT733(S.C.)*** – In this case, the Hon'ble Supreme Court observed that in every case, the Court has to find out the primary object of the transaction and the intention of the parties while entering upon it before deciding the issue in question related to the transaction.
 - ii. ***Union of India (UOI) and Ors. v. Playworld Electronics Pvt. Ltd and Ors, 1988(38)E LT733(S.C.)*** – The same position was reiterated in this case where the Hon'ble Supreme Court pointed out that it was necessary to find out the true nature of the transaction before deciding upon it.
20. Therefore, even if a *prima facie* reading of the 'Independent Contractor Status' clause portrays that the services provided by the Appellant can be availed separately, on delving into the intention of the parties, it could have easily been confirmed that the services were intended to be provided bundled together and in the facts of the present case, the Appellant had provided the FSO with both Consultancy Service as well as Support Service. The findings of the Authority are based on fundamental misunderstandings of vital facts and fundamental mis-appreciation or misapplication of the relevant law and therefore the Impugned Order is bad in law, arbitrary, legally unsustainable, and deserves to be set aside. In this context, the Hon'ble Supreme Court in ***Micro Hotel P. Ltd. vs. Hotel Torrento Ltd. [(2012) 10 SCC 290]*** declared the law as follows:
- "Wrong appreciation of facts leads to wrong reasoning and wrong conclusions and justice will be the casualty. Deciding disputes involves, according to Dias on Jurisprudence, knowing the facts, knowing the law applicable to those facts and knowing the just way of applying the law to them. If any of the above mentioned ingredient is not satisfied, one gets a wrong verdict."*
21. It is industry practice to supply MCS as a bundle of Consultancy Service and Support Service which practice has emerged and evolved over decades and was not appreciated by the Authority. It is therefore important that the true nature of transaction should be looked into also keeping in mind the industry practice while characterizing MCS. Reliance on a single clause of an agreement and isolating the other indicative parameters like market practice, how consideration is charged and collected, etc. renders the Impugned Order erroneous and unsustainable.
22. Further, the observation of the Impugned Order that there exists no service which can be identified to be a principal supply of service from the services listed in the exhibit to



the Agreement is erroneous and flawed. Consultancy Service provided by Appellant to FSO augments its business viability and profitability. It is the Appellant's advice on vessel positioning, bunker trends, commodity market, etc. which helps FSO to reach out to potential charterers which is the main objective of FSO's business. The Appellant by utilizing the market intelligence gathered by the research analysts employed by it, with respect to vessel positioning, bunker trends, commodity market, inter alia others, suggests potential charterers that may require the services of the FSO. Thereafter, FSO indulges in negotiation of terms of the contract with the charterer it finds most suitable among the potential charterers suggested by the Appellant. Once FSO enters into a contract with the charterers, Appellant is called upon to provide Support Service in relation to the voyage.

23. Therefore, without Consultancy Service, FSO will not be able to efficiently contract with potential charterers to provide transport services. Further, even though both the services are necessary for the successful completion of the contract between the FSO and charterer, it cannot be denied that provision of Support Service is conditional on the existence of a contract between an FSO and potential charterer for transport of goods by a ship which needs to be adequately supported for its successful completion. The contract for the same comes into being only when the Consultancy Service provided by the Appellant culminates in the entering of a contract between an FSO and the potential charterer identified by the Appellant. Accordingly, Consultancy Service provided by the Appellant must be considered to be the principal supply of service.
24. It is relevant to note that the State Tax Officer in his submission before the Hon'ble authority on March 13, 2018 ("Revenue Submission") acknowledged that that MCS is a composite supply of service in terms of Section 2(30) of the CGST Act, and despite this the Authority concluded contrarily.

The Impugned Order fails to rule on the classification of services provided by the Appellant

25. It is now well known that the Authority for Advance Ruling of other states and indeed this state too have ruled on and provided classification entry for goods and services provided
26. The Impugned Order is flawed to the extent that the Authority has failed to exercise its jurisdiction and rule on the issue raised by the Appellant before it regarding the



classification of MCS provided by the Appellant (which is Consultancy Service and Support Service bundled together) in terms of scheme of classification of services provided in the annexure to the Notification. The Impugned Order merely discusses the entries of the Notification and does not rule on the chapter, section, heading, group or the SAC code under which MCS service provided by the Appellant should be classified.

MCS should be classified under Heading 9967 of the Notification

27. In regard to this, the Appellant has identified two categories in the Notification under which MCS can be classified. The Notification provides for the GST rate for service based on the classification of services read with Annexure to the Notification. Heading 9967 at Serial No. 11(ii) of this Notification deals with "Support Services in transport, other than GTA". Given that MCS service provided by Appellant to FSO is in relation to transportation of goods by vessel only, the Appellant held the opinion that Heading 9967 under which SAC 996759 at Serial No. 148 of the Annexure to the Notification ("other supporting services for water transport nowhere else classified") is the specific entry which provides the appropriate description of activities provided by Appellant. Therefore, MCS will be classified therein and leviable to GST at the rate of 18%.

Explanatory notes to the Scheme of Classification of Service

28. Explanatory notes to the scheme of classification issued by the Central Board of Indirect taxes and Customs provide which "indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services". Explanatory note to SAC 996759 which deals with "other support services for water transport" provides the following:

"This service code includes water transport supporting services directly connected with vessel operations not elsewhere classified, and also include services not directly connected with vessel operations such as ice breaking, vessel registration, vessel laying-up and storage services, etc."

29. Thus, in terms of the explanatory notes issued by the Government, services directly or indirectly connected with water transport should be classified under SAC 996759. Therefore, Heading 9967 under which SAC 996759 at Serial No. 148 of the Annexure to



the Notification is the specific entry which provides the appropriate description of activities provided by Appellant.

General Agreement of Trade in Services

30. To substantiate its submission, reference is made to classification as per Service sectoral classification list of World Trade Organization ('WTO') which classifies MCS service provided by Appellant as 'supporting services for maritime transport' (entry 745). The Schedule prescribed under the Served for India Scheme ('SFIS') of Foreign Trade Policy has embraced the classification by the WTO. This Schedule of SFIS scheme also classifies MCS under the category of Maritime Transport Services [supporting services for maritime transport (745)]. Thus, it can be safely concluded that MCS provided by Appellant to FSO would be classified as Support Services in transport, other than GTA.
31. In the invoice raised by Appellant on FSO, which categorizes the supply of service by Appellant to FSO as MCS, supports the commercial understanding. Consequently, in the financials of Appellant for the year 2017-18 in the Profit and Loss accounts income from MCS has been reflected as revenue.

MCS cannot be classified under Heading 9983 of the Notification

32. Further, MCS will not be classified under Heading 9983(ii) at Serial No. 21 as "other professional, technical and business services other than (i) above". Relevant entry under Heading 9983 is SAC 998399 at Serial No. 364 of the Annexure which is "other professional, technical and business services nowhere else classified". Services classified under this head are leviable to GST at the same rate of 18%. It is evident that this is the residuary entry which is generic in nature. Reference in this regard may be made to the basic principle of classification in terms of which a specific entry will prevail over a generic entry which has been upheld by the Hon'ble Supreme Court in the case *Moorco (India) Limited vs. Collector of Customs, Madras* [(1994) 74 ELT 5 (SC)]. The same principle was reiterated in the case *Coastal Container Transporters Association vs. Union of India* [(2018) 65 GST 413 (Gujarat)]. As this is a generic entry, it is submitted that the specific entry of SAC 996759 would prevail.

The Authority has failed to answer a question permissible under Section 97(2) of CGST Act



33. The Authority has failed to appreciate that determination of classification, which is permissible question under Section 97(2) of CGST Act, is necessary to ascertain the place of supply of service, which in turn would equip the Appellant to determine whether the supply of MCS by the Appellant to an FSO would qualify as an export of service under Section 2(6) of the IGST Act, and subsequently the tax liability on the supply of MCS.

Export of service is defined under Section 2(6) of the IGST Act as following:

"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"*

34. The Appellant satisfies the conditions (i), (ii), (iv) and (v) prescribed above as the supplier of service i.e. the Appellant is located in India, the recipient of service i.e. the FSO is located outside India, payment for supply of MCS service is received from outside India in convertible foreign exchange and supplier of service and recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8 of the IGST Act. Therefore, it becomes necessary to decide and adjudicate the place of supply in terms of Section 13 of IGST Act, so as to conclude that the supply of MCS service provided by the Appellant would qualify as an export of service.

35. Since, exports are considered to be "zero rated supplies" according to Section 16(1) of IGST Act, qualification of supply of MCS service as export of service would have direct impact on the taxability of the supply of service. Further, it has been observed by the Hon'ble Bombay High Court in the case **Repro India Ltd v. Union of India**[2009 (235) E.L.T. 614 (Bom.)] that it has never been the intention of the Government to export tax but only to export goods, in the present case, export of services. If the supply of MCS does not qualify as an export of service under Section 2(6) of IGST Act even though it satisfies all the conditions prescribed under Section 2(6) of IGST Act, it would amount to export of taxes which is against what the Government intended.



36. Therefore, the Authority defeats the purpose of making an application for advance ruling by not ruling on the question of classification of services, which is well within the ambit of Section 97(2) of CGST Act and is essential to be determined to decide the place of supply and consequentially the taxability of a transaction is flawed and bad in law. Non-consideration of the question relating to place of supply which has direct nexus with the taxability of the transaction has caused grave hardship to the Appellant.

GST cannot be levied on a transaction which is outside the jurisdiction of GST law

37. In arguendo, if the Appellant's services that is, Support Services is characterized as an "intermediary service", it must not be lost sight of that –
- The service provided by the Appellant in this case would be in relation to employment of a vessel (i.e. service provided) by the Appellant located outside India
 - The destination of Appellant's service is outside India
 - To the charterer located outside India, and
 - Contract for plying of vessel between FSO and the charterer is signed outside India and executed outside India.
38. Therefore, as the service of Appellant is provided in relation to a service which is intangible in nature and is initiated, executed and concluded outside India, between parties located outside India in relation to a vessel located outside India, and the service of Appellant is used/ consumed outside India, the transaction be regarded as being outside the territorial jurisdiction of GST law, which extends up to 200 nautical miles from base line inside sea in India. In other words, the jurisdiction of the CGST Act or IGST Act does not extend to such transactions, in terms of the doctrine of territorial nexus as laid down by the Hon'ble Apex Court in **GVK Inds. Ltd. & Anr. vs. Income Tax Officer & Anr. [(2011) 332 ITR 130 (SC)] ("GVK Industries case")**. In this case the Hon'ble Apex Court has held that:

Para 18

"It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India as explained above in the answer to Question 1 above. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws "for the whole or any part of the territory of India", and they



may not be invalidated on the ground that they may require extra-territorial operation. Any laws enacted by Parliament with respect to extraterritorial aspects or causes that have no impact on or nexus with India would be ultra-vires, as answered in response to Question 1 above, and would be laws made "for" a foreign territory."

39. In the Impugned transaction, only the Appellant is in India, who is engaged by the FSO to help in finding potential foreign charterers. The tax foisted on the Appellant fails the territorial nexus test laid down by the Hon'ble Apex Court in **GVK Industries** case.
40. Further, it is relevant to note that if GST is levied on the Impugned transaction which is outside the territorial jurisdiction of GST law, it would amount to export of taxes which is not what was intended by the Government as has been observed in the case **Repro India Ltd v. Union of India (Supra)** by the Hon'ble Bombay High Court and would thus be bad in law.

Support Service provided by the Appellant would not qualify as an "intermediary service" in terms of Section 2(13) of IGST Act

41. In arguendo, if the MCS service provided by the Appellant does not qualify as a "composite supply" within the terms of Section 2(30) of CGST Act, there would be no bundling of Consultancy Service and Support Service. Essentially, both the services would be provided independent of each other and the consideration for the services rendered would be obtained separately. Since, both the service would be availed separately by the FSO, the Support Service provided by the Appellant cannot be termed as an "intermediary service" as it would not be for the facilitation of any other supply of service but would be a service provided independently on his own account.
42. The Impugned Order is erroneous and misdirected, in as much as that the supply of Support Service provided by the Appellant would not qualify as an "intermediary service" within the terms of Section 2(13) of IGST Act. An intermediary service in terms of Section 2(13) of the IGST Act, is extracted below:

"Section 2(13) – "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."



43. According to the *Webster's Encyclopedic Unabridged Dictionary of the English Language*, the term "arrange" means "to prepare or plan". Further, the *Black's Law Dictionary, 9th Edition* defines the term "facilitation" as "the act or an instance of aiding or helping". Since, in the facts of the present case, the provision of Support Service can by no means be considered as being provided for the purpose of preparing or planning the transaction between the FSO and the charterer. Support Service provided by the Appellant to the FSO comes into play only in the latter part of the transaction to ensure successful completion of service provided by the FSO for which the Appellant has limited interaction with the charterer and is purely for Appellant to provide its services to FSO. Additionally, the supply of service is for the purpose of fulfilling the contractual obligations between the FSO and the Appellant by undertaking to do all activities necessary for the successful completion of the MCS service rendered by it on its own account. Therefore, the Support Service provided by the Appellant cannot be considered as a service rendered for the purpose of helping or aiding the FSO in its contract with the charterer. It must be understood as an ancillary service provided for the successful completion of the service rendered by the Appellant to the FSO.
44. Further, it is relevant to note that Section 2(13) of CGST Act which defines "intermediary service" intends for the participation of three parties, namely, the supplier of goods or services, the recipient of goods or services and a facilitator. Section 2(13) evidences the establishment of a link between all the three parties, which is absent in the facts of the present case. The Appellant is only linked to the FSO for provision of MCS services and there is absolutely no nexus between the Appellant and the charterer. Moreover, the definition of "intermediary service" requires the provision of two independent services, one by the supplier of goods or services to the recipient of goods or service and second by the intermediary facilitating this supply of goods or services. The Appellant in the present case is involved in providing MCS service which consists of two services, that is, Consultancy Service and Support Service, which services are bundled together and provided by the Appellant. Therefore, the Appellant cannot be said to facilitating service between the provider and recipient of goods and services. Thus, the Support Service provided by the Appellant cannot qualify as an "intermediary service" within the terms of Section 2(13) of CGST Act.
45. In the facts of the present case, the Appellant provides MCS service to the FSO on a Principal to Principal ("P2P") basis. Further, the Appellant has no role to play in negotiating the terms of the contract between the FSO and potential charterer. The Appellant's role involves the provision of market intelligence to the FSO which helps



the FSO in identifying potential charterers that would be interested in contracting with it and thereafter to provide Support Service for the transport of goods by ship.

46. The Appellant enters into a contract with the FSO for the supply of MCS service which consists of Consultancy Service and Support Service, and the fee for the provision of service will be a percentage of the gross revenue of the transaction and would be predetermined by the FSO and the Appellant and would be paid only on the successful completion of the voyage of the vessel chartered. The Appellant employs research analysts who gather the requisite market intelligence and on the basis of this intelligence gathered, the Appellant provides the FSO with a list of potential charterers that the FSO can contract with. Further, the service provided by the Appellant is on his own account and reliance in this regard can be placed on para 1 of the Agreement which provides that the Appellant is required to provide independent advice uninfluenced by commercial concerns and that the Appellant is not required to be an advocate for the FSO at any point of time.
47. Clause 5 of the Agreement which deals with 'Independent Contractor Service' provides the following:
- FSO shall request the Appellant's services on an as-needed basis.
 - There is no guarantee that any or all of the services described in the Agreement will be assigned during the term of this Agreement.
 - Services will be provided on a non-exclusive basis.
 - The FSO may chose to have any of services performed by the other consultants or FSO's own staff.
 - The parties acknowledged that neither party has or shall be deemed to have the authority to bind the other party.
48. Therefore, the Authority has merely relied on the part of the Agreement which provides that the FSOs may elect to avail any of the services. However, the same clause also provides that the service shall be provided on a non-exclusive basis and neither party has the authority to bind the other party. Thus, this clause selectively referred by the authority should be looked at in its entirety to understand that the Appellant does not have the ability or power to enter into contracts, etc. and actions of the Appellant were not binding on the FSO.
49. Reference in this regard is made to the Advance Ruling in the case of ***In Re :Godaddy India Web Services Pvt. Ltd. [2016 (46) S.T.R. 806 (A.A.R.)]***. In this case, the applicant was involved in providing Support Services in relation to marketing, branding, offline



marketing, oversight of quality of third party customer care centre and payment processing, on a principal to principal basis to a domain service provider named 'GoDaddy US'. The applicant in this case was not authorized to enter into any contract or arrangement on behalf of GoDaddy US. GoDaddy US directly contracted and rendered services to customers in India. Further, the applicant was provided remuneration by GoDaddy US and received no payment of any kind from the customers of GoDaddy. The Authority for Advance Rulings, New Delhi held that service provided by the applicant would not be considered as an "intermediary service" under Rule 2(f) of the Place of Provisions of Services Rules, 2012. In Applicant's case, the Applicant is not authorized to enter into any contract or arrangement on behalf of the FSO. The Applicant scouts for potential charterers in the market and provides this information to the FSO who then directly negotiates, enters into contracts, and renders service to the charterers who may be located in India or abroad. Remuneration for service is provided by the FSO to the Applicant and no payment is received from the charterers who are the customers of the FSO.

50. Similarly, reference is made to the decision of the Authority of Advance Ruling in the case of *In Re : Universal Services India Pvt. Ltd [2016 (42) S.T.R. 585 (A.A.R.)]*. In this case, the service provider providing payment processing facilities to a domain service provider was held not to be a provider of "intermediary service" within Rule 2(f) of the Place of Provisions of Services Rules, 2012, as the service provided by him was on his own account and remuneration entitled to him was payable by the domain service provider alone and no remuneration of any kind was obtained from any of the customers of the domain service providers. As is the case of the Applicant where MCS is provided by the Applicant on its own account and remuneration to him is payable by the FSO and no remuneration of any kind is paid or payable by the charterer.
51. Further, it is relevant to note that there exists no contractual obligations between the Appellant and the charterer. Therefore, it can be said that there is no privity of contract between the Appellant and charterer. Section 2(13) of IGST Act requires a person to arrange or facilitate the supply of goods or services or both, or securities, between two or more persons for the service provided to be considered as "intermediary service" and since the Appellant is contractually bound only to the FSO and does not engage in any interaction with the charterer, the Appellant cannot be said to facilitate any arrangement or supply of goods or services between the FSO and charterer.



52. The Impugned Order is consequently flawed to the extent that it observes that the Appellant is required to interact with the charterer for the provision of Support Services like 'Monitoring of Voyage Execution' and 'Examination of lay time calculations' and therefore supply of Support Service provided by the Appellant would qualify as an "intermediary service" within the terms of Section 2(13) of IGST Act. This is contrary to fact record.
53. Appellant and the FSO are in a fiduciary relationship in terms of which the Appellant is obligated to act for the benefit and interest of FSO. In this regard, the appellant may be required to interact with the charterer for the successful completion of the service provided by the FSO. But, this interaction does not give rise to any contractual obligation between the Appellant and the charterer. Further, any interaction of this kind is only to fulfil the contractual obligations with respect to the services provided by the Appellant to the FSO and cannot be construed as provision of services by the Appellant to the charterer. Therefore, any interaction of this nature must not be understood as facilitation of services between the FSO and charterer by the Appellant and must be perceived as ministerial acts carried out by the Appellant in the course of fulfilling the contractual obligations that exist between the Appellant and FSO.

Personal Hearing

54. A personal Hearing in the matter was conducted 03.10.2018, when Shri Ranjeet Mahtani, Advocate, appearing on behalf of the Appellant, reiterated their written submissions made during the time of filing the present appeal. He further deposed that their principal supply is the consultancy service and not the intermediary services as envisaged by the Advance Ruling Authority as they do not represent, or act on behalf of, the Foreign Ship Owners (herein after referred to "FSO")while negotiating the terms and conditions of the contracts/agreements, related to the chartering of the vessels entered between FSO and their clients, thereby, not facilitating or arranging for the said supply of the vessels chartering services by the FSO to their clients in any manner. They are just suggesting the name of the potential charterers of the vessels to the FSO by way of the market research and analysis undertaken by the various professionals/experts employed by the Appellant. Thus, they are rendering the consultancy services to their clients. In addition to this consultancy services, they are also providing support services after the contracts between the FSOs and their clients for the chartering of the vessels owned by the FSO are finalised and the actual navigation of the vessels commence, when they are required to monitor the vessels' voyage execution for smooth and efficient operations so as to optimize performance for the ship owners along with the other ancillary services like examining lay time calculations, accounts settlements with the charterers etc. They termed their above said activities as a package of services called Marine Consultancy Services (herein after



referred to as "MCS"), which is the comprehensive combination of the consultancy services and support services.

57. However, Smt. Rukmani S. Iyer, State Tax Officer, appearing on behalf of the Department, countered all the arguments made by the Appellant either orally, or in writing, by sticking to their earlier contentions, made before the Advance Ruling Authority (AAR).

DISCUSSION AND FINDINGS

58. Heard both the parties. Ongoing through all the relevant case records, oral & written submissions made by the Appellant and the Respondent, the issues/questions, which are, before us, to decide, are as under:-

- (1) Whether Marine Consultancy Service ("MCS") provided to foreign ship owners constitutes "composite supply" with the principal supply of consultancy service.
- (2) In the alternate, where service are provided to the foreign ship owners distinctively as supply of consultancy service and support service with separated and demarcated fees for their consultancy service and for support service:
 - (a) Whether consultancy service will qualify as business consultant service in terms of the scheme of classification of services [Annexure to Notification 11/2017 – Central Tax (Rate) dated 28/06/2017.
 - (b) Whether the support service qualifies as "intermediary service" in terms of Section 2(13) of IGST Act.

The other questions regarding determination of the 'place of supply' in respect of the above mentioned services and under the above discussed circumstances, which have been raised in the Application filed before the Authority for Advance Ruling has not been taken up since the Appellant have agreed and acceded to the findings of the Advance Ruling Authority, wherein the members of the AAR have observed that since, the determination of the place of supply of a service is not covered under the spectrum of the specific issues/questions, which may be raised before the Advance Ruling Authority for the purpose of the clarification, as provided under the Section 97(2) of the CGST Act, 2017.

59. Coming to the issue no. 1, first of all, we will discuss the meaning of the 'Composite Supply'. As per Section 2(30), "composite supply" means a supply made by a taxable person to a recipient **consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and are supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.**



60. Here, the Appellant has submitted that they are providing the consultancy services and the Business Support Services to the FSO, one after the another i.e. first they are first providing the consultancy services by way of the provision of the list of the potential charterers of the vessels owned by the FSO, after doing all the professionals driven research and analysis of the data procured from the various authentic sources. They are classifying these activities as consultancy services. Out of this list of the potential charterers, when the FSO enters into agreement with any of these charterers for chartering of their vessels subject to the terms and conditions of the said agreement, the FSO again call for the services of the Appellant, this time to monitor the *voyage execution* and examine the lay time calculations and account reconciliation etc., which the appellant are classifying as support services. Thus, consultancy services are followed by the support services.
61. The Appellant has further submitted that while exploring the potential charterers for the vessels owned by the FSO, they have to interact with those potential charterers, to know their requirements and expectations related to the chartering services. They further added that they do not play any role in the eventual agreements entered between the FSO and the charterers for the chartering of the vessels. They also submitted that they do not have any obligation towards or agreement/contracts with these charterers.
62. Further, on perusal of the sample agreement dated 01.03.2017 entered between Singapore Shipping International Pte. Ltd. (FSO) and Five Star Shipping (the consultant/Appellant) under and pursuant to the MV AM Ocean Pride/Marubeni Cement Charterer Party Contract dated 03.03.2017 submitted before the Appellate Authority, it is seen that the Appellant is eligible for payment from the FSO, their client, only if the FSO has entered into the contract with one of the charterers out of the list provided by the Appellant and all the support services including voyage execution, examining lay time calculations and account reconciliation, etc., as agreed between the Appellant and the FSO have been rendered by the Appellant. Thus, on perusal of the above said agreement and the submissions made by the Appellant, it is adequately evident that the primary activity of the consultant is to introduce the FSO to their potential clients who may be interested in chartering the vessels of FSO.
63. Now, the moot issue is to decide whether the said activity of the introduction of their clients, in this case the FSO, with the potential charterers of their vessels would be considered as intermediary services as pronounced by the Advance Ruling Authority or the Consultancy Services as being pleaded by the Appellant. To decide this issue, first



we would like to discuss the scope of the intermediary services, which is being reproduced herein below as provided in the Section 2(13) of the IGST Act, 2017:-

2(13) "Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Thus, necessary conditions for any activity to be an intermediary service are asunder:-

- (i) There should be supply of goods or services or both;
- (ii) There should be the involvement of three persons (i) the supplier of the goods or services or both (ii) the receiver of the supply of the goods or services or both and (iii) the intermediary who arranges or facilitates the said supply of goods or services or both subject to the condition the said supply is not made by the intermediary himself on his own account.

64. Applying these above conditions/parameters to the instant case, it is expressly understood that the Appellant is acting as an 'intermediary' in the present arrangement. This can be understood by the following sequence of facts.

- (i) There has been a supply of services, called Rental services of water vessels including passenger vessels, freight vessels and the like with or without operator as classified under **SAC 996602**, by FSO to the vessel charterer.
- (ii) There are involvement of three entities only, first one is Supplier of the chartering services, i.e. The FSO; Second one is the receiver of this chartering service i.e. the charterer and the third one is the Appellant, who have made this supply of service, i.e. chartering of the vessels service, possible by introducing FSO to this charterer by way of the short listing of various potential charterers for the vessels of FSO. Besides this, as a matter of fact, the Appellant is not supplying this service i.e. chartering of vessel service, as the vessels are not owned by them but the by the FSO. Thus, all the conditions or parameters for the intermediary services have been fulfilled by the services being provided by the Appellant to the FSO.

65. In view of the above, it is conspicuously evident that the Appellant is acting as an intermediary for the FSO. Though the Appellant is insisting that they are not having formal contracts with any of the potential charterers of the vessels, this is not the requirement or criterion for supply of the intermediary services, as can be seen from the definition of the intermediary, as reproduced above.



66. The Appellant, in their appeal submissions, have also been highlighting the industrial practice, wherein a FSO avails Consultancy Service and Support Service bundled together as Marine Consultancy Service from the same supplier for it increases effectiveness and helps in cost economization. However, from the study of market practices or trends in vessels chartering industry available on the website bearing address general.cargoship.com/charter-markets.html, it has come to our notice that the ships are normally "fixed" on charters with the assistance of the shipbrokers, who may be the FSO's brokers or charterers brokers. Here the FSO's brokers are those, who find and arrange employment for their principals' ships and charterers' brokers are those who find ships to carry out their principals' requirements. The chief stages involved in the fixing of the ships/vessels chartering process include the following activities:

1. Circulation by the charterers' broker of "cargo orders", outlining charterers' forthcoming cargo transportation requirements.
2. Circulation by the owners' broker of "position lists" or "tonnage lists", detailing expected "open" dates and positions of available ships.
3. Study of market reports by brokers.
4. Negotiations on main terms between brokers on behalf of their respective principals, with offers and counteroffers by either side; if main terms cannot be resolved, there is little or no point in negotiating further details.
5. Negotiations "on subjects", e.g. "subject stem", "subject receiver's approval", etc., where the main terms have been agreed, but final agreement is subject to various secondary conditions being agreed.
6. Fixture, i.e. the full and final agreement, with all "subjects" removed.

Following fixture is a "post-fixture" or follow-up period during which the broker may undertake various administrative functions on behalf of his principal, such as (in some cases) collection of freight or hire.

Shipbrokers are remunerated by commission, called "brokerage", payable by the ship owner to each broker involved in arranging a contract. In voyage or time charters the brokerage payable is stipulated in a Brokerage Clause and is normally



1.25% of the ship owner's gross receipts from hire, freight, dead freight and demurrage, payable to each broker involved.

67. Thus, on perusal of the market/industry practices as mentioned above, it is prominently noticed that the appellant have made agreement keeping all the clauses related to the necessity or the requirement of the services being offered to the FSO similar to the practices observed in the vessels chartering industry, which include (a) the arrangement for the employment of the principals' ships/vessels by way of the study and analysis of the various market reports/trends and intelligence gathered from the other reliable data resulting into the short listing of the potential charterers; (b) facilitating the main supply of services i.e. the Renting of the water vessels with or without operator agreed between the FSO, the provider and their clients i.e. the vessels charterers by undertaking the activity in the form of monitoring of the voyage execution (c) undertaking various other administrative services like examination of lay time calculation and reconciliation of the voyage related accounts for eventual settlement with the vessel charterers; which are the essential requirements for receiving the payment from the FSO. This brokerage or commission amount is a fixed percentage of the gross amount received from the charterers as consideration for this vessel chartering services.
68. In the sample agreement dated 01.03.2017 entered between Singapore Shipping International Pte. Ltd. (FSO) and Five Star Shipping (the consultant) under and pursuant to the MV AM Ocean Pride/Marubeni Cement Charterer Party Contract dated 03.03.2017, on perusal of the Compensation and reimbursement clause at Sr. No. 3 therein, it is discerned that the FSO is paying, in each particular charter party contract, to the Appellant a fee of 1.25% of Gross Revenue (here "Gross Revenue" meaning the freight, dead freight and demurrage received under contracts through the consultant). Thus, by looking into the details of the above said agreement, which, inter-alia, stipulates the activities to be performed by the Appellant as part of the services to be provided to the FSO and the amount, it will be receiving from the FSO for providing these services i.e. 1.25 % of the gross receipt from the charterers and considering the market practice and trends in vessel chartering industries, it is revealed that the Appellant has framed the agreement in such a manner so that their activity as intermediary is not revealed at any stage by projecting themselves as mere consultant to the FSO, with an intent to avoid the levy of GST on the services provided to the FSO. However, the fact is that all the activities, they are doing, is clearly pointing to their role as intermediary not only at the first stage, when they are introducing the FSO to their potential charterers, out of which the final agreements in respect of the chartering of the vessels are being done, but also at the later stages, when they are

called upon their principal i.e. the FSO, for rendering the voyage execution, on the behalf of the their principal i.e. the FSO. Thus, the Appellant is actually facilitating the supply of the main services i.e. chartering of the vessels by the FSO to their clients i.e. charterers, thereby clearly acting as an intermediary, as the chartering of the vessels is not the main service of the Appellant, but their principal i.e. the FSO. Appellant are performing all these services on behalf of their principal i.e. the FSO, thus acting as an intermediary. The above said intermediary services can be classified under the **Service Accounting Code 999799**, which is "**Other Miscellaneous Services**", as per the Annexure to the Notification 11/2017 –C.T. (Rate) dated 28.06.2017 as the intermediary activities cannot be classified in any other service head/group of the above mentioned Annexure.

69. Further, in addition to the above intermediary activities, they are obliged to perform the other administrative activities like examination of lay time calculation, voyage account reconciliation for eventual settlement with the charterers, which can be classified under the service head /group '**accounting services**' bearing the **SAC 998222**.
70. In view of the above discussions, it can be deduced that the entire gamut of services or activities performed by the Appellant can be treated as composite supply of the **intermediary services** and **accounting services**, of which the intermediary supply is the principal supply, as the appellant, at the first stage, is arranging for the supply of the main service i.e. Rental services of water vessels including passenger vessels, freight vessels and the like with or without operator as classified under **SAC 996602**, between the service provider i.e. the FSO and the service receiver i.e. the vessels charterer and at the later stage, when the contract for the supply of the main services are finalised between the FSO and the vessel charterers, the Appellant is called upon to facilitate the provision of the main services i.e. monitoring of the voyage execution etc. Remaining administrative activities like examination of the lay time calculation, voyage accounts reconciliation and settlement thereafter etc. which is in the nature of '**accounting services**' provided to the FSO, can be covered under the incidental services to the main services of the Appellant, which is the intermediary services, as the Appellant are obliged to provide all these services to the FSO as per the list of activities enlisted in the Annexure A to the above mentioned agreement. Thus, the entire gamut of the activities of the appellant can be considered as composite supply of the **intermediary services** and **accounting services**, of which the intermediary service is the principal service.
71. As regards the Appellant's submission made in the para K, that they had been classifying the above discussed activities as the Business Auxiliary services prior to the GST regime, where they have taken service tax registration under Business Auxiliary



Services, and not under the Support Services and Business Consultancy Services as per the present claim or submissions made before the Appellate Authority, it is crystal clear that they themselves are not clear about their activities because if they are providing consultancy services and support services as per their own submissions and pleadings made in this regard, they should have taken their service tax registration either under Business Consultancy Services or under Business Support Services. But, that was not the case. Instead, they opted for the Business Auxiliary Service. In this way, they are clearly contradicting their entire submissions and contentions and by doing so, their entire appeal has no grounds worthy of consideration.

In view of the above discussions, we pass the following order—

Order

In view of the above discussion, we hold that the entire gamut of services performed by the Appellant are in fact of the composite supply of the intermediary services, classified under the **Service Accounting Code 999799**, which is **other miscellaneous services**, and the **accounting services** under the **SAC 998222**, of which the intermediary service is the principal supply.

Therefore, the issues raised by the Appellant with regard to their activities in this appeal stands disposed in terms of the above discussion and findings. The individual questions, asked by the Appellant vide their application filed before the Authority for the Advance Ruling as well as vide their appeal filed before us have lost the context as well as relevance in light of all the above discussion and findings, as we do not look the activities of the Appellant, specified in the Annexure to the Agreement in question, as grouping of consultancy service and support service, rather we treat the entire gamut of services as a composite supply of **intermediary services** and **Accounting services** of which the **intermediary services** is the **principal supply**.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant

2. The AAR, Maharashtra

3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai

4. The Commissioner of State Tax, Maharashtra

5. The Jurisdictional Officer

6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN

7. Office copy

