

Services provided by liaison office to its foreign head office constitutes 'supply' – Karnataka AAR

27 October 2020



Summary

The Karnataka Authority for Advance Ruling (AAR) has held that the activities carried out by a liaison office (LO) in India, such as business promotion of head office (HO) incorporated in Germany amounts to 'supply'. The applicant and its HO are deemed to be related persons.

Therefore, even in the absence of any consideration, activities performed by the applicant falls under the scope of supply as it is in relation to furtherance of business. Further, the AAR held that the applicant and HO shall be treated as establishments of distinct persons and the activities performed by them cannot be classified as export of services.

Facts of the case

- The applicant¹ is an LO situated in Karnataka. The HO of the applicant is incorporated in Germany and is engaged in promotion of applied research.
- The applicant sought an advance ruling before the Karnataka AAR to understand whether the activities carried out by the LO for the HO amounts to supply of services and whether such LO is required to obtain registration under the Goods and

Service Tax (GST) and is liable to pay GST.

Karnataka AAR observations and ruling²

- **Applicant covered under definition of 'person':** The Reserve Bank of India (RBI) has recognised the applicant and conferred on it certain duties along with placing certain restrictions. Therefore, the applicant falls under the definition of person³ that also covers every artificial juridical person.
- **Activities done by applicant covered under definition of 'business':** The AAR

¹ Fraunhofer-Gesellschaft Zur Forderung (Liaison Office in India)

² KAR ADRG 50/2020 dated 8 October 2020

³ Section 2(84) of the CGST Act, 2017

stated that the activity of the applicant falls within the definition of 'business' as it is ancillary to the main business activity of the HO. Therefore, the applicant is involved in business⁴.

- **LO and HO are deemed to be related**

persons: The applicant has admitted that they are involved in promoting business of the HO in India and they act on behalf of the HO for its customers in India. Thus, the applicant (LO) and their HO are deemed to be related persons⁵.

- **Activities performed by applicant**

constitute 'supply': The activities performed by the applicant falls within the scope of supply⁶ as it is in relation to furtherance of business even in absence of consideration. Such supply of services amounts to inter-state supply⁷. Therefore, the applicant shall be liable to obtain GST registration⁸.

- **Activity not an export of service:** The HO is outside India and hence the HO has

an establishment in India. Thus, the applicant (LO) and their HO shall be treated as establishments of distinct persons⁹. Therefore, the LO and its HO are distinct persons and the activities performed by them cannot be called export of services¹⁰.

- **Applicant is an 'intermediary':** The applicant is facilitating supply between the HO and its customers in India. Further they have a mandate from RBI for this purpose and are restricted to not make any supply on their own. Thus, the applicant is a distinct legal entity covered within the definition of intermediary¹¹.

⁴ Section 2(17) of the CGST Act, 2017

⁵ Section 15 of the CGST Act, 2017

⁶ Section 7 read with Schedule I of the CGST Act, 2017

⁷ Section 7(5) of the CGST Act, 2017

⁸ Section 24 of the CGST Act, 2017

⁹ Section 8 of the IGST Act, 2017

¹⁰ Section 2(6) of the IGST Act, 2017

¹¹ Section 2(13) of the IGST Act, 2017

Our comments

The Karnataka AAR has held that the activities carried by LO amounts to supply. Contrary to this, the Tamil Nadu AAR¹² had earlier held that LO is nothing more than an extended arm of the HO and performs no separate functions other than those specified and approved by the RBI. Similar ruling was also pronounced by the Rajasthan AAR¹³ and the Maharashtra AAR¹⁴.

Existence of such contrary rulings create confusion amongst the taxpayers and may give rise to further litigation. A clarification from the government on this issue will surely be helpful in preventing unnecessary litigation on this account.

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¹³ Habufa Meubelen B. V.

¹⁴ M/ Hitachi Power Europe GmbH

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