

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act
2017)

A.R.Appeal No. 4/2020/AAAR

Date: 18/08/2020

BEFORE THE BENCH OF

1. Thiru.G.V.KRISHNA RAO, MEMBER

2. Thiru. M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/02/2020 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act 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.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	Rajesh Rama Varma Tower-5, Flat No. 403, Sky Dugar Rajan Kuppam Road, Chennai. Tamilnadu 600 095
GSTIN or User ID	33ABAPV7712P1Z7
Advance Ruling Order against which appeal is filed	Order No. 20/ARA/2020 dated 24.04.2020
Date of filing appeal	06.07.2020
Represented by	
Jurisdictional Authority-Centre	Chennai – North Commissionerate
Jurisdictional Authority -State	Assistant Commissioner, Ashok Nagar Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20073300040399 dated 03/07/2020 and 20073300062031 dated 06/07/2020

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by Shri. Rajesh Rama Varma (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33ABAPV7712P1Z7. The appeal is filed against the Order No.20/AAR/2020 dated 24.04.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellant has stated that he is engaged in the business of providing IT software related consulting services in the area of Oracle ERP w.r.t Oracle Financials. The major services provided by him broadly include implementation, enhancement, support services and any other services that fall within the ambit of

the Oracle Financials sphere. The services provided by him currently are covered under the SAC (Service Accounting Code) 998313. These services are being provided by him to both Indian and Foreign clients requesting the services. In Jan 2019, he has entered into a contract with a GST registered IT Company in India, M/s. Doyen Systems (hereinafter referred to as 'Principal' or 'Doyen Systems'), providing similar Oracle services. As part of the Contract his role was that of a Consultant to provide support services to the Oracle ERP owned by the US client of Doyen Systems based out of Boston. The original contract is between the Principal and their US client and a part of the service stands contracted to him. As per the terms of the contract entered into by the appellant with Doyen Systems, the consultancy fee for his services was decided to be billed on an hourly basis in USD of \$33.90 per/hr. The fee was decided to be paid in equivalent INR based on the conversion rate of INR/USD on the average prevailing rate of the last 3 month. The GST taxes would be charged separately while raising the invoice by him on the Principal. The contract is currently in force and valid till December 2021. The activities obliged to be undertaken as per contract is to Provide the support services directly to the US client from the office premises of the Principal; Timesheet on the hours worked during the month to be provided monthly to enable billing the US client(The details of the time sheet so provided was consolidated with the timesheet provided by the other employees of the Principal working on the project and an invoice was raised in USD on the foreign client); At the end of the month he was provided with the Billing in USD and equivalent INR value by the Finance department of the Principal, based on which he raise invoice on the Principal in INR terms with GST @18% (9% CGT + SGST@9%) separately (The Principal was availing the benefit of Export of services and filings claim accordingly with the GST authorities). Advance Ruling was sought on the following Question(modified vide their submissions dated 28.01.2020):

1. Whether the services provided by the applicant shall be treated as local services or export of services
2. Whether the applicant is liable to pay GST on such services provided to the US Client directly
3. Whether the benefit of zero-rated supply can be availed by him for his services
4. Whether he is eligible for refund of taxes already paid in the past if the refund is within the time limit provided under the GST Act.

3. The Original Authorities has ruled as follows:
1. The services provided by the applicant to Doyen systems Private Limited is a supply of services under CGST /TNGST Act and the applicant is liable to pay relevant tax on such supply.
 2. The other questions raised are not answered as the same is not in the ambit of the authority as per Section 97(2) of the Act.

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- Under para 7.1 of the order, the Hon'ble Bench has held that the contract between Doyen Systems and the appellant did not specify which client.

In this connection, the appellant referring to the contract has stated that the contract rate is the IRM new rate. IRM is the name of the client as well. Also, the invoices submitted by the appellant to Doyen Systems specifically mention the Consulting Fee is towards Oracle EBS IRM Support in the Particulars Column. This together bring out the fact that the services were meant for the US client, which in the present case is IRM.

- Under Para 7.2 of the order, the Hon'ble bench admits that IRM is a client of Doyen Systems and goes on to state the contract is between Doyen Systems and the client and appellant are not privy to the main contract. The appellant has stated that it is an admitted fact that they are not privy to the main contract but the subcontract between Doyen Systems and the appellant emanates from the main contract. Without the main contract there is no question of the appellant being provided with this sub contract. So the appellant claims that the contention of AAR in para 7.1 above stands contradicted w.r.t the client for whom the appellant is providing the services.

- The appellant contends that as the question of the existence of a client is brought out, the next question that needs to be ascertained is the nature of the service, the relationship of Doyen Systems with the appellant and the client, the place of service to help determine whether the transaction is an interstate or intrastate transaction and accordingly the tax liability.

(1) The relationship between Doyen Systems and the appellant- It is provided in para 2 of the contract that Doyen Systems will be referred to as the Principal. It is further elaborated that the Consultant is also free to promote products and services of DSPL. The above two facts together make it clear

there is a Principal Agent Relationship that has been overlooked by the Hon'ble Bench while arriving at the decision.

(2) W.r.t the supply of services, it is a fact that GST is a destination based consumption tax. IT services are a skill based service which can only be discharged by an individual possessing the skill. It is an admitted fact that the appellant was contracted by DSPL to provide consulting services for which a contracted rate in USD was provided. Now the question that arises is, if the services were to be provided to DSPL which is an Indian Entity registered under GST why would the contract rate be denominated in USD. It could well have been contracted in INR, which is the currency in circulation in India. This points to the fact that the contract was meant for services to be provided for a foreign client. Further to the point in the order, that the services were treated to be provided to DSPL by the appellant does not hold true as if that was the case the services should have been consumed by DSPL and there would have been no need for a timesheet approval from the client of DSPL. This points to the fact that the services were provided to the foreign client. The timesheet is the link which evidences the appellants working hours on providing the services to the foreign client. The contract specifically states that all payments are subject to approved invoices and client time sheet. So there is a direct connection between the payments that was received and the services that was provided to the client, therefore, the Hon'ble Bench's observation that in case of any payment default the appellant can lay claim only against the company and not against the foreign client does not hold true though such a scenario is not point of contention in this application

- From the above submissions, it is clear that though the contract is between the appellant and DSPL, the services were provided to and consumed by the client of DSPL who is based outside India. As stated, the services provided by the appellant is an individual skill based services and it can only be provided directly to the recipient. Further, the contract specifies that the payment is subject to approval of client timesheet which is good enough evidence to suggest that the services have been provided to the foreign client and that service is being validated by the client by approving the timesheet.

Only for such approved timesheet the foreign client was releasing payment to DSPL

- In the light of the above submissions it is pertinent here to refer to the terms recipient and consideration as defined in the GST Act. From the definition of recipient, it emerges that there are two parts to the definition to fall under (a) as recipient - Supply of goods or services AND Payable of Consideration.
- Consideration envisaged in the GST Act is wide enough to include payment obligation which can be satisfied by any other person other than the actual recipient as well. This situation is squarely covered in the present case which has been overlooked by the Hon'ble Bench while passing the order.
- Services provided by the appellant is directly to the client and this is evidenced by the approval of the timesheet. Further payment of the consulting fees by DSPL to appellant is subject to timesheet approval. This all points to the fact that the consideration paid by DSPL to the appellant is in fact the consideration, which was due from the client to the appellant but remitted by DSPL on behalf of the client.

The appellant had requested to set aside the ruling of the Original Authority and reconsider as to whether the services provided by the appellant is a supply of services under CGST/TNGST Act or IGST Act.

PERSONAL HEARING:

5. Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the appellant was addressed through the Email Address mentioned in the application to seek his willingness to participate in a virtual Personal Hearing in Digital media vide e-mail dated 17th July 2020. The appellant responded to the said mail on 18th July 2020, wherein he stated that he did not wish to have a personal hearing and the matter may be decided based on merits available in his submissions. The appellant followed by this mail also furnished a letter in his letterhead reiterating his consent to waive the hearing and to decide the case on merits.

DISCUSSIONS:

6. We have carefully considered the submissions of the Appellant and the applicable statutory provisions. The issue before us for decision is whether the

service provided by the appellant is a supply of services under CGST/TNGST Act or IGST Act.

7. From the submissions, we find that the appellant has been contracted by M/s Doyen Systems Private Ltd to provide professional and consultancy services to be carried out through them and that, he had rendered software support services to the client of M/s Doyen Systems Private Ltd, IRM in the United States of America and is paid in rupee equivalent of US Dollars on hourly basis at agreed rates by Doyen systems after approval of invoice and client time sheet. The Point of contention is that the appellant claims that the skill-based services provided by him is ultimately consumed by the client of Doyen Systems for which he is paid by Doyen Systems who have contracted him is an export of services provided by the appellant while the Original authority has held that the appellant has a contract only with Doyen systems who pays the consideration to him, after verifying the time sheet of the appellant with their client and the services provided by the appellant are intra-state supply to Doyen Systems taxable to CGST/SGST.

8. We find that the contention is based on his following averments:

- GST is a destination based consumption tax. The skill-based service supplied by him is consumed by the client of Doyen Systems and therefore the recipient of his services are the client of Doyen Systems who is based outside India
- Section 2(93)(a) of the GST Act which defines recipient has two parts to it, 'Supply of Goods or Services' and 'Payable of Consideration'; 'Consideration' envisaged in the GST Act is wide enough to include payment obligation which can be satisfied by any other person other than the actual recipient

9. The Statutory provisions relating to 'Recipient' and 'Consideration' are examined as under, taking the guidance of decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)], wherein in Para 26, the Apex Court has given the guidelines to interpret the Statute:

.....In the later decision, a Bench of seven-Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute :

“(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed : it cannot imply anything which is not expressed : it cannot import provisions in the statute so as to supply any deficiency :

(ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of Legislature’s failure to express itself clearly”.:

The Apex Court has stated that the Statute is to be read and understood in the light of what is expressed and nothing can be imported in the statute to overcome any deficiency and if the words are ambiguous and open to interpretations, the benefit of interpretation is given to the subject.

Section 2(93) of the CGST Act 2017, defines ‘recipient’ as:

(93) “recipient” of supply of goods or services or both, means—

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

(b) where no consideration is payable; and

(c) where no consideration is payable

Thus Recipient is defined based on whether a ‘Consideration’ is payable or otherwise. When a consideration is payable for the supply of goods or services, as is the case in hand, the person who is liable to pay that consideration is the ‘Recipient’ of such ‘Supply’. The Statute is clear and unambiguous in defining the ‘Recipient’ when a consideration is payable.

Section 2(31) of the Act defines ‘Consideration’ as:

(31) “consideration” in relation to the supply of goods or services or both includes—

– (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Thus, consideration in relation to a supply should include any payment made for such supply whether by the recipient or any other person. This definition states

about what is to be the value/consideration for supply on which tax is liable to be paid. This definition do not speak or clarify on 'Recipient' of supply but merely encompasses the elements of 'Consideration' for a supply.

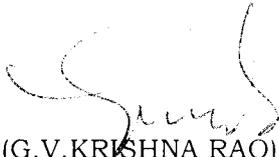
10. On a joint reading of both the definition, the statute is unambiguous in as much as it says, the person liable to pay the consideration for supply of services is the 'Recipient' of such supply and 'Consideration' is any payment made whether by the recipient or any other person for such supply. It is not disputed that the appellant is under contractual obligation to Doyen Systems to provide services through 'Doyen Systems' for which Payment is agreed to be made by Doyen Systems to the appellant after verifying the invoice and the client time-sheet as in the Contract Agreement. Further as observed by the lower Authority the payment of 'Consideration' to the appellant is entirely with the Doyen Systems and the appellant cannot claim consideration directly with the client of Doyen Systems or the client of Doyen Systems is not the person liable to pay the appellant for the services supplied by the appellant. Thus, it is clearly evident that the recipient of Services of the appellant is Doyen Systems. We find that the lower authority has considered the above and accordingly pronounced the ruling. We do not find any reason to interfere with the same.

11. In view of the above we, Pass the following Order:

ORDER

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.


(M.A. SIDDIQUE)
18/8/2020
Commissioner of State Tax
Tamilnadu /Member AAAR


(G.V. KRISHNA RAO)
18/8/2020
Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR

To

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