

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 50/2020

Date : 08-10-2020

Present:

1. Dr. Ravi Prasad M.P.
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri. Mashhood Ur Rehman Farooqui,
Joint Commissioner of Central Tax, Member (Central Tax)

1.	Name and address of the applicant	M/s Fraunhofer-Gessellschaft Zur Forderung der angewandten Forschung e.V, Germany-Liasion Office, # 405 & 406, Prestige Meridian Towers-II, 30, M G Road, Bengaluru-560 001.
2.	GSTIN or User ID	291900000250ARV
3.	Date of filing of Form GST ARA-01	17-01-2020
4.	Represented by	Sri. Rajesh Kumar C A, Authorised Representative
5.	Jurisdictional Authority - Centre	--NA-- Unregistered
6.	Jurisdictional Authority - State	--NA-- Unregistered
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN RBIS20012900008454 dated 06.01.2020.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. Fraunhofer-Gessellschaft Zur Forderung der angewandten Forschung e.V, Germany -Liasion Office, (called as the 'Applicant' hereinafter), # 405 & 406, Prestige Meridian Towers-II, 30, M G Road, Bengaluru-560 001, having User ID 291900000250ARV, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The applicant, incorporated in Germany, undertakes the business of promoting applied research and hence established their liaison office in Bangalore, India, (*herein after referred to as "Applicant" or "Liaison office / LO "*), under the permission of RBI vide FE.CO.FID/27803/10.97.856/2013-14 dated 11.06.2014, to act as an extended arm of the head office and to carry out the activities that are permitted by Reserve Bank of India. The UIN allotted by Reserve Bank of India is BGLO14007856. In view of this the applicant sought advance ruling in respect of the following questions:

- i. Whether the Activities of a liaison office amount to supply of services?
- ii. Whether a liaison office is required to be registered under CGST Act, 2017?
- iii. Whether liaison office is liable to pay GST?

3. **Admissibility of the application** : The applicant filed the instant application as an unregistered person, in relation to the establishment of Liaison office in Bangalore, India. Further the applicant have sought advance ruling in respect of the questions on the issues covered under Section 97(2)(g), (f) & (e) of the CGST Act 2017 respectively and hence the application is admitted.

4. **Applicant's statement of relevant facts**: The applicant furnishes the following facts which have a bearing on the questions raised by them in the instant application:

4.1 M/s. Fraunhofer-Gesellschaft ZurForderung der angewandten Forschung e.V, (*herein after referred to as Head office/HO*) is incorporated in Germany and undertakes the business of promoting applied research. The HO established their liaison office in Bangalore, India (*herein after referred to as "Applicant" or "Liaison office / LO "*) which is acting as an extended arm of the HO and carryout the activities as are permitted by Reserve Bank of India vide FE.CO.FID/27803/10.97.856/2013-14 dated 11.06.2014. The UIN allotted by Reserve Bank of India is BGLO14007856. Copy of the said RBI permission letter dated 11.06.2014 has been enclosed.

4.2 The Reserve Bank of India stipulated certain conditions for the establishment of liaison office in India. They are:

- (i) The liaison office shall be established within six months from the date of the permission letter.
- (ii) **The liaison office will not generate income in India and will not engage in any trade / commercial activity** and undertake only permissible activities as mentioned in Schedule II of FEMA Notification No. 22/2000-RB dated May 3, 2000, as amended from time to time.



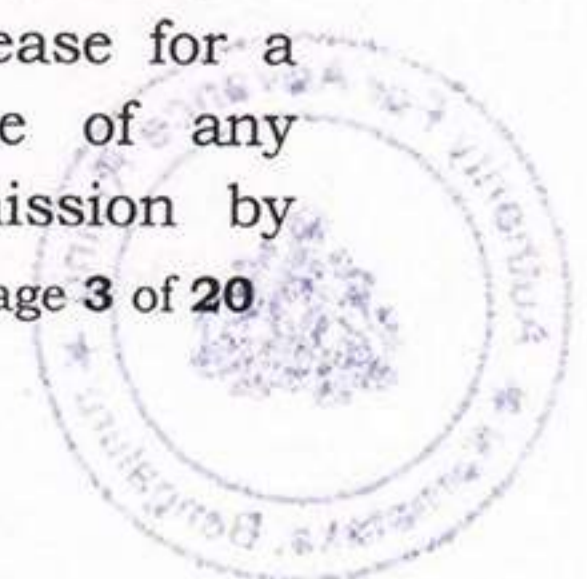
- (iii) It should restrict its activities to those given in Para 4 (iii) (a) of Form FNC submitted by the Applicant.
- (iv) It will function as per the conditions mentioned in the Annexure-1 of RBI approval letter.
- (v) It will represent only the applicant company and approach RBI for prior approval if it wants to represent any group company.

4.3 Further Annexure-I of the RBI permission letter provides the terms and conditions according to which the liaison office in India will perform the following functions.

- a. Representing in India the parent company.
- b. Promoting export/import from/to India.
- c. Promoting technical/Financial collaborations between parent/group companies and companies in India.
- d. Acting as a communication channel between the parent Company and Indian Companies.

4.4 In addition, certain other conditions were also stipulated such as:

- (i) It shall work only for liaison activities and not for any indirect entry into service.
- (ii) Shifting the liaison office to any other city shall be made only with the prior approval from RBI.
- (iii) Except the proposed liaison work, the office will not undertake any other activity of trading, commercial or industrial nature nor shall it enter into any business contracts in its name without RBI permission.
- (iv) No commission/fees will be charged or any other remuneration received/income earned by the office in India for the liaison activities/services rendered by it or otherwise in India.
- (v) The entire expenses of the office in India will be met exclusively out of the funds received from abroad through normal banking channels.
- (vi) The liaison office shall not borrow or lend money from/to any person in India without prior permission of Reserve Bank of India.
- (vii) It shall not acquire, hold (otherwise than by way of lease for a period not exceeding five years) transfer or dispose of any immovable property in India without obtaining permission by



Reserve Bank of India. Under the Foreign Exchange Management Act (Acquisition and transfer) of immovable property in India.

- (ix) It shall furnish and submit the Annual Activity Certificate of the activities of the Liaison office from the Auditors at the end of 31st March and same needs to be submitted on or before September 30 of that year. In case the annual accounts of the Liaison Office are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet.
- (x) It shall also submit a copy of Annual Report to the Directorate General of Income Tax (International Taxation), New Delhi.
- (xi) It will not render any consultancy or any other services directly/indirectly with or without consideration.
- (xii) It will not have any signing/commitment powers, except than those which are required for normal functioning of the office, on behalf of the head office.
- (xiii) The activities/affairs of the offices may be verified/examined by RBI by carrying out a scrutiny as and when found necessary.

4.5 Later, the liaison office vide letter dated 21.03.2017 requested for Renewal/Extension of Approval of Liaison Office from RBI. The same is renewed for 3 years till 11.06.2020 by Deutsche Bank vide letter Ref - DB/PCC_GCO/REM/2017/80 dated 29.03.2017. Copy of renewal/extension of approval letter dated 29.03.2017 has been enclosed.

4.6 The Liaison office also obtained a Chartered Accountant certificate dated 20.04.2019 affirming that they had undertaken only those activities that have been specifically permitted by Reserve Bank of India and had complied with the terms and conditions specified therein. Copy of certificate dated 20.05.2019 has been enclosed.

4.7 The Applicant/Liaison office, Bangalore understands that the activity of the liaison office is merely an extended arm of the Head office as the liaison office is not engaged in any business activity on its own, not charging or collecting any fee or consideration and had adhered to the conditions stipulated in the RBI approval letter. Moreover, Liaison is neither related nor distinct persons, but are in fact working as employees of the Head Office. Therefore, the activities performed by the liaison office to the Head office customers in India are considered to be provided by the Head office itself.



4.8 In addition, the liaison office do not account any form of income as forthcoming in the Financials of the liaison office and the only income being the remittance from the Head office which is purely to meet the working of the liaison office.

4.9 In order to have clarity on certain issues under the CGST Act confirmation as to their understanding and the issue being covered under Section 97 of the CGST Act, 2017, the Applicant makes the present application to obtain the advance ruling on the following:

- (a) Whether the Activities of a liaison office amount to supply of services?
- (b) Whether a liaison office is required to be registered under CGST Act, 2017?
- (c) Whether liaison office is liable to pay GST?

5. **Applicant's interpretation of law** : The Applicant submits their interpretation of law as under:

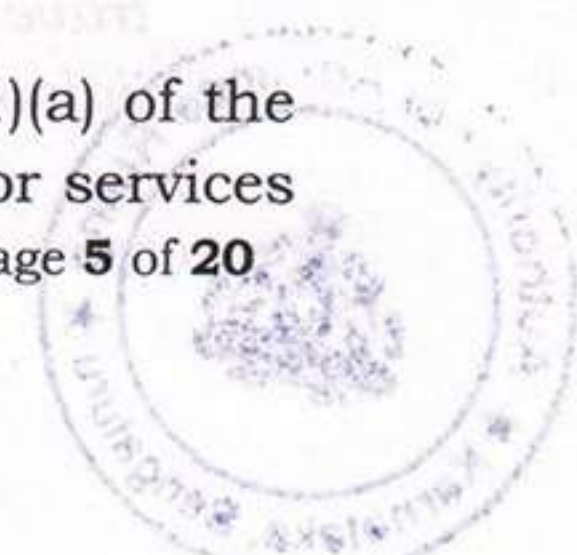
5.1 The levy and collection of the CGST is governed by the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') and levy and collection of SGST is governed by Karnataka Goods and Services Tax Act (KGST), 2017 for the state of Karnataka & levy and collection of IGST is governed by Integrated Goods and Services Act, 2017 (hereinafter referred to as the 'IGST Act'). Further, GST is a tax to be levied on supply of goods and/or services. Any transaction to be taxed under Section 9 of the CGST Act, 2017, first it should be covered within the scope of supply as stipulated in Section 7 of the CGST Act, 2017. Any transaction must be a supply made in the course or furtherance of business, for a consideration, in terms of Section 7 of the CGST Act 2017, to get covered within section 7(1)(a) under the CGST Act, 2017.

5.2 The liaison office in Bangalore undertakes only those approved works as permitted by the RBI and is neither engaged/involved in any other activity of trading, commercial or industrial nature nor into any business contract in their own name without prior permission. No commission/fees are charged or any other remuneration received/income earned by the office in India for the liaison activities/services rendered by it or otherwise in India.

5.3 The certificate issued by Chartered Accountant vide letter dated 20.05.2019 reaffirms that the Liaison office undertakes only those activities that have been specifically permitted by RBI vide its approval letter dated 11.06.2014 and has complied with the terms and conditions specified therein. Further, the liaison office do not receive any consideration or fee and it is purely maintained by inward remittances from the Head office to meet the expenses. The Financials of the liaison office also put forth the same. Copy of Financial statement for the period 2018-19 has been enclosed

5.4 The activity of the liaison office does not fall within Section 7(1)(a) of the CGST Act, 2017 as the same is not engaged in supply of any goods and/or services

Fraunhofer



for consideration and not engaged in any business activity and it merely acts as extended arm of the Head office.

5.5 Schedule II of the CGST Act, 2017 provides that certain transaction even if made without consideration to be treated as supply. Sl.No.2 of the Schedule is as follows

“Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business”

5.6 The Head office and the liaison office, in this case, are one and the same and they are not distinct persons. They are not related persons as there is only one legal entity and no relationship can be established. Further, they are not distinct persons under Section 25, as distinct persons should have two or more establishments. In this case, the liaison office is mere extension of the Head office and no separate identity can be established. Hence, they are neither related nor distinct persons, but are in fact working as employees of the foreign office. Accordingly, activities undertaken by the Liaison office are not covered under the definition of supply.

5.7 Therefore, the liaison office situated in Bangalore, is nothing more than an extended arm of the Head office/HO and the liaison office performs no separate functions other than those specified and approved by the RBI. In other words, the liaison office acts on behalf of the Head office/HO for its customers in India.

5.8 Further, in the GST regime, the Authority for Advance ruling in the case of **IN RE: TAKKO HOLDING GmbH 2018 (19) G.S.T.L. 692 (A.A.R. - GST)** had held in a similar matter as under

In the case at hand, Takko are working as the liaison Office of M/s. Takko Holding GmbH, Germany with the prior permission of RBI. Liaison Activities include acting as communication channel between the parent company and Indian supplier of goods to parent company at Germany in terms of the procurement, order placement, quality checks, and technical support shipping of the Readymade garments. Takko is not receiving any consideration for this from the suppliers. Except this liaison work, this office in India would not undertake any activity of trading, commercial or industrial nature nor would they enter into any business contracts in its own name without RBIs prior permission. There is no commission/fees being charged or any other remuneration being received/income being earned by the office in India for the liaison activities/ services rendered by it. The HO, reimburses the expenses incurred by Takko for their operations in India which are in the nature of salary, rent, security, electricity, travelling, etc. They do not have any other source of income. Further the liaison office is strictly prohibited to undertake any activity of trading,



commercial or industrial nature or entering into any business contracts in its own name.

5.9 Based on the above rationale the Authority for Advance ruling in the case cited supra had ruled as under:

- 1) The liaison activities being undertaken by the applicant when strictly in line with condition specified by RBI permission letter do not amount to supply under CGST and SGST Act.
- 2) *In view of Ruling at 1 above, the Applicant is not liable to pay CGST, SGST or IGST, as applicable.*
- 3) *In view of Ruling at 1 above, the Applicant is not required to get itself Registered under GST for the liaison activities.*

5.10 Further in the case of **IN RE: HABUFA MEUBELEN B.V. 2018 (14) G.S.T.L. 596 (A.A.R. - GST)**, also the Authority for Advance ruling took similar view wherein it was ruled as under;

In view of the submissions made by the applicant and as discussed in above paras, when the applicant/liaison office is working as per the terms and conditions as mentioned under Para 1.1 to 1.5 above, the reimbursement of expenses and salary paid by M/s. HabufaMeubelen B.V. to the liaison office, is not liable to GST, as no consideration for any services is being charged by the liaison office. Further, the kind of reimbursement claimed by them from their HO is also falling out of the purview of supply of service and as there are no such taxable supplies made by the Liaison office, they are not required to get themselves registered under GST.

5.11 In terms of section 103 of the CGST Act, 2017, even though Advance rulings are applicable only to the respective applicants, the principles and rationale applied in the cases cited supra can be applied to the instant case since the facts and activities are similar in nature.

5.12 The liaison work done by the Indian liaison office is nothing but the Head office/HO itself , as one cannot provide service to oneself and for supply to be established the presence of two or more parties is required.

5.13 Based on the above understanding, the applicant is on the view that the liaison office established by its Head office/HO would not fall within the scope of 'supply' as defined under Section 7 of CGST Act, 2017 and they are not required to be registered and not required to pay GST on the activities undertaken by them.



PERSONAL HEARING / PROCEEDINGS HELD ON 20.02.2020 & 28.07.2020

6. Sri. Rajesh Kumar T R, Chartered Accountant & duly authorised representative of the applicant appeared for personal hearing proceedings held on 20.02.2020 & reiterated the facts narrated in their application. Further they also requested for additional hearing opportunity, vide their letter dated 25-05-2020. An additional hearing opportunity was given on 28-07-2020 and the authorised representative of the applicant appeared & furnished written submissions, in support of their argument, inter alia stating as under:

6.1 The term 'liaison office' is not defined under CGST Act 2017, but defined in **Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016** as

"Liaison Office' means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel."

6.2 Further as per Regulation 4(b), the permissible activities for a person resident outside India who is permitted by RBI to establish a liaison office in India are the activities specified in Schedule II. To carry on any other activity unless it is specifically permitted by the RBI. The activities listed out in the said Schedule II are as follows:

- i. Representing the parent company / group companies in India.
- ii. Promoting export / import from / to India.
- iii. Promoting technical/ financial collaborations between parent/ group companies and companies in India.
- iv. Acting as a communication channel between the parent company and Indian companies.

6.3 RBI approval letter dated June 11, 2014 specifically puts certain conditions as per Annexure – 1 to the said letter the essence of which is pointed out at **para E in brief facts above**. Among them some of the relevant conditions are as follows:

- i. It shall work only for liaison activities and **not for any indirect entry into service**.
- ii. Except the proposed liaison work, the office **will not undertake any other activity of trading, commercial or industrial nature nor shall it enter into any business contracts** in its name without RBI permission.
- iii. No commission/fees will be charged, or any other remuneration received/income earned by the office in India **for the liaison activities/services rendered by it or otherwise in India**.



- iv. The entire expenses of the office in India will be met exclusively out of the funds received from abroad through normal banking channels.
- v. It will **not render any consultancy or any other services directly/indirectly** with or without consideration.
- vi. It will **not have any signing/commitment powers**, except than those which are required for normal functioning of the office, on behalf of the head office.

6.4 The levy of GST is governed by Charging Section 9 of CGST Act /SGST Act, in case of intra-state supplies and Charging Section 5 of IGST Act in case of Inter-state supplies.

- a. Those charging section authorizes levy of GST on:
 - Supply of goods or services;
 - On the value determined in terms of Sec. 15 of CGST Act;
 - At the rate notified;
 - To be collected in the manner prescribed;
 - Paid by the taxable person;
- b. 'Supply' is explained in Section 7 of CGST Act to essentially include
 - All forms of supply of goods or services made or agreed to be made;
 - For Consideration (except for certain cases set out in Sch. I);
 - By a person;
 - In the course or furtherance of business;
- c. Cumulatively to establish taxability the following elements should exist:
 - There should be a person;
 - The person should be engaged in Business;
 - The person should make or agree to make supply of goods or services;
 - The supply should be in the course or furtherance of such Business;
 - The supply should be for a consideration except in cases covered under Sch. I;
 - The value should be arrived in terms of Sec. 15 of CGST Act;
 - There should be prescribed rate of tax for such supply;
 - Tax on such supply is to be paid by the 'taxable person';
 - It has to be paid in the prescribed manner;
- d. LO submits their understanding on each of aspects relating to taxability as is relevant to them as follows:

Re : Person and establishment of distinct person

1. The term person in general understanding is only natural person. However, statute in CGST Act, Section 2(84) has specifically defined it to include –
 - an individual;
 - a Hindu Undivided Family;
 - a company;
 - a firm;



- a Limited Liability Partnership;
 - an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
2. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- anybody corporate incorporated by or under the laws of a country outside India;
 - a co-operative society registered under any law relating to co-operative societies;
 - a local authority;
 - Central Government or a State Government;
 - society as defined under the Societies Registration Act, 1860 (21 of 1860);
 - trust; and
 - every artificial juridical person, not falling within any of the above;

2.1. By virtue of sub-clause (h) the Foreign Entity is falling within the definition of person. The LO not being a separate entity than Foreign Entity, it does not fall on its own into the definition of any of the sub-clauses given in Section 2(84) of CGST Act.

2.2. It would be relevant to refer to Section 25(5) of CGST Act. It reads as follows:

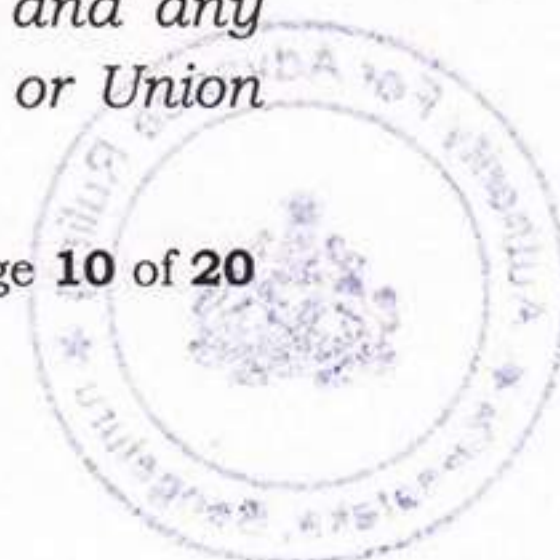
“(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.”

Since the LO do not have establishments more so in two states, the above provision is not applicable.

2.3. Further it would be relevant to refer to Explanation 1 and 2 to Section 8 of IGST Act, which reads as follows:

Explanation 1. - For the purposes of this Act, where a person has, -

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory;
- or
- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union



territory, then such establishments shall be treated as establishments of distinct persons.

Explanation 2. - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

- 2.4. Explanation 2 specifically bringing out when it will be treated as establishment in that territory for the purpose of Explanation 1. Therefore, it would be relevant to examine whether in the explanation 2 is applicable to the present case of liaison office.
- 2.5. To fall within the clutches of explanation 2, the said branch/agent/representational office should be carrying out business for their HO/Principal/Primary entity since the wordings used therein is **“carrying on a business through”**. In other words, the Branch/Agent/representational office should carry out business on behalf of the HO/principal/Primary entity.
- 2.6. In the present case, LO is restricted to do any business directly or indirectly and also debarred from charging any consideration for the liaison activity as per the conditions imposed by RBI in its approval letter dated 11th June 2014.
- 2.7. Accordingly, the applicant submits that they cannot be treated as separate establishment and whereby it cannot be construed to be establishment of distinct person for the purpose of IGST law.
- 2.8. With this it results to a point that the activity happening in India at LO is being carried out by the Primary Entity located at Germany.

Re : Business and Engaged in business

- 2.9. The term 'Business' is defined in Section 2(17) as
“business” includes —
- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
 - (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
 - (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;



- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

2.10. Mainly the sub-clause (a) covers what are the activities which constitute business. In the said clause the activities listed out are trade, commerce, manufacture, profession, vocation, adventure, wager. Other sub-clauses are either connected to sub-clause (a) or specifically covering certain new activities.

2.11. From the perspective of the applicant stand alone, it is not engaged in any of these activities listed out in sub-clause (a) or specific sub-clauses.

2.12. Further also the definition of 'Business' in general also includes these activities. Since RBI has specifically debarred the applicant as a distinct person (assuming but not admitting) to carryout business.

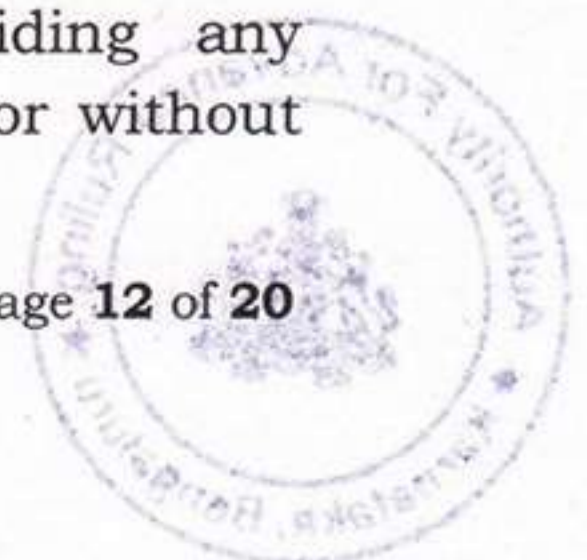
2.13. Based on the above points, it can be said that applicant is not engaged in any business as defined under GST law.

Re: Making any forms of supply of Goods or Service

2.14. The term 'supply' *per se* is not defined in GST law. In common parlance it is giving of moving something from one person to another. In the something may be goods or service. Therefore, to make a supply or agree to make a supply there should be two persons. If two persons do not exist, it cannot be said there is a form of supply.

2.15. In the present context as discussed above since the applicant is an extended arm of the entity in Germany, it cannot be said that there is any form of supply leave apart whether it is goods or service.

2.16. Assuming but not admitting that the applicant is an establishment of distinct person, RBI restricts the applicant for providing any consultancy or any other services directly/indirectly with or without consideration.



- 2.17. Further also there cannot be any supply of services, since what is being carried out by the applicant is work as per the instructions/directions of the Primary Entity in Germany and as their extended arm. In fact, the applicant is working as employees of the Primary Entity as per the conditions and directions of RBI.

Re: In the course or furtherance of such Business;

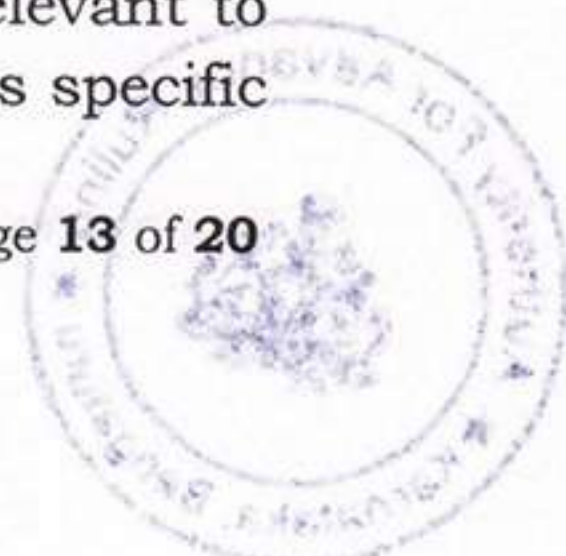
- 2.18. The requirement is that the supply if any should be in the course or furtherance of Business. That should be the business of the supplier. As discussed above there is no Business on standalone of the Applicant, the question of in the course of business or furtherance of business does not arise.
- 2.19. Accordingly, it cannot be said that the activity carried out by the applicant is in the course or furtherance of Business.

Re: Consideration and Schedule I;

- 2.20. To be construed as 'supply' for taxing it should be for a consideration except in cases covered under Sch. I.
- 2.21. In the instant case the applicant is not working for any consideration from its primary entity. Also as clearly restricted by RBI that the applicant is not entitled to charge commission/fees or earn any other remuneration received/income for the liaison activities/services rendered by it. Further the entire expenses (like Salary, Rent, staff welfare, Travelling Costs etc.,) of the office the applicant in India will be met exclusively out of the funds received from abroad through normal banking channels. The same are not construed as income of the entity in India as well under the Income Tax Act. 1961.
- 2.22. Thereby it can be said that there is no consideration for the activities carried out by the applicant in any manner.
- 2.23. When it comes to whether it falls in any of the entries in Schedule I. One of the entry requires examination is entry 2 which reads as

"2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business"

- 2.24. The distinct persons referred to in this is only as specified in Section 25(5) which covers registrations in multiple states within India and not covers outside country and within India. Further also relevant to note that Section 25(5) is not adopted in IGST Act, instead as specific



explanation is set out section 8 again giving those words. Also being a part of the same entity, it cannot be construed to be related persons.

- 2.25. Therefore, it cannot be falling within the ambit of schedule I when there is no actual consideration.

Re: Valuation in terms of Sec. 15 of CGST Act:

- 2.26. When there is no consideration, the question of arriving at the value in terms of Section 15 does not arise.

Re: Notified rate of tax:

- 2.27. Assuming but not admitting that there was supply and for consideration, there is no specific rates set out for the activity of liaison within the same entity. All the entries set out therein are services which has a contractual obligation for specific works, whereas in the present case there is no such specific work, they are supposed to work as per the direction of the Primary entity. Therefore, there is also no specific rate set out in the notification to tax this type of activity.

Re: 'taxable person' and Registration :

- 2.28. The taxable person is defined in the law as "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

- 2.29. Therefore, it becomes relevant to understand the requirement of registration in terms of Section 22 or 24. As far as Section 22 is concerned, it mandates registration if the aggregate value of supplies exceeds 20 Lakhs. Since in the instant case there is no supply or consideration, the question of reaching aggregate value of supplies does not come into picture. Therefore Section 22 is not attracted.

- 2.30. When it comes to Section 24 also since they are not making any supply for consideration, they are not falling within any of those clauses as well.

- 2.31. Also it is relevant to note that as per Section 23 (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act; Since there is no liability to tax in the present case as per the above submissions, there is no requirement for registration as well.



2.32. Further also Section 25 dealing with procedure for registration does not provide specifically registration of establishment of foreign entity even if it is construed to be establishment of an entity which is located outside India. Therefore, on this ground also there is no requirement of registration in the absence of specific requirement.

Re: Prescribed manner of payment of tax;

2.33. The manner of payment of tax has to be specifically set out in the Rules. Again, this is a special type of arrangement wherein it is not having any independent rights. Even RBI says that the Applicant will **not have any signing/commitment powers**, except than those which are required for normal functioning of the office. Therefore, in such circumstances the law does not provide for special procedure making the foreign entity liable to pay tax through their representative office. Accordingly, even there is no procedure prescribed for payment of tax in case of liaison office.

3. Without prejudice to the foregoing merely for reference, the Applicant also understands and submits that

3.1. Sl. No. 10F of Notification No. 9/2017-IT(R) dated 28th June 2017 as amended provides exemption for

“any services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the Integrated Goods and Services Tax Act, 2017.”

The same is subject to condition that

“the place of supply of the service is outside India in accordance with section 13 of Integrated Goods and Services Tax Act, 2017”

3.2. Section 13(2) says that the place of supply would be location of the recipient if it is not covered on perusal of the activity of the applicant falls within Section 13(2) since the activities carried out by them do not get covered under any of the sub-clauses from Section 13(3) to 13(13).

3.3. One of the clauses in Section 13(8) refers to intermediary where the place of supply will be the location of the supplier. However, the definition of ‘intermediary’ is given in Section 2(13) as

(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;*



3.4. It is relevant to note that there should be three persons, one supplier another recipient and third the intermediary. The definition of 'intermediary' does not cover a situation of transaction between establishments of distinct persons. In fact the definition also requires intermediary to be broker or agent or person. The person should be separate independent person and cannot be establishment of distinct person. If the statute was so intending, then like explanation to Section 79 of CGST Act, there should have been specific mention wherein it is saying "*Explanation. — For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.*"

3.5. Accordingly, it Applicant cannot be construed to be a person, more so intermediary and thereby the activity in question is not covered under any of the sub-sections from Section 13(3) to 13(13).

3.6. Thereby place of supply for the supply if any, will be location of recipient i.e. Germany and thereby it would be exempted from tax.

4. Based on the above understanding, the applicant is of the understanding that

4.1. The activity carried out by them is not supply as per Section 7 of CGST Act;

4.2. The Applicant is not liable for registration;

4.3. The Applicant is not liable to pay any tax;

5. The Applicant also understands that same issues are already examined by other Advance Ruling Authorities and have giving the rulings similar to our understanding. The reference of the Rulings are as follows:

5.1. Takko Holding GmbH 2018 (19) GSTL 692 (A.A.R.-GST) –

i. *The liaison activities being undertaken by the applicant when strictly in line with condition specified by RBI permission letter do not amount to supply under CGST and SGST Act;*

ii. *In view of Ruling at (1) above, the Applicant is not liable to pay CGST, SGST or IGST, as applicable;*

iii. *In view of Ruling at (1) above, the Applicant is not required to get itself Registered under GST for the liaison activities.*

5.2. Habufa Meubelen B.V. 2018 (14) GSTL 596 (A.A.R.-GST) –

"If the liaison office in India does not render any consultancy or other services directly/in directly, with or without any consideration and the liaison office does not have significant commitment powers, except those which are required for normal functioning of the office, on behalf of Head Office, then the reimbursement of expenses and salary paid by M/s. Habufa Meubelen B.V. (HO) to the Liaison Office, established in



India, is not liable to GST and the applicant i.e. M/s. Habufa Meubelen B.V. Jaipur, is not required to get itself registered under GST.”

Based on the above submissions it is humbly prayed before the Hon'ble Authority for Advance Ruling to give the ruling confirming our understanding as submitted above.

7. DISCUSSION & FINDINGS:

7.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the issues involved & relevant facts having a bearing on the questions in respect of which advance ruling is sought by the applicant.

7.2 At the outset, we would like to state that the provisions of both the CGST Act, 2017 and the KGST Act, 2017 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 corresponding similar provisions under the KGST Act.

7.3 The applicant being the Liaison office, of the Head Office incorporated in Germany, opened in India under the permission of RBI & the conditions / restrictions of the activities stipulated by RBI, sought the advance ruling in respect of the questions mentioned at para 2 supra. We take up the questions for discussion, one at a time.

7.4 The core issue before us to decide is whether the activities being undertaken by the applicant (LO), in line with the conditions specified by RBI, amount to supply under CGST Act 2017 or not. The remaining questions are dependent on the said core issue.

7.5 It is observed, on examination of the documents on record, that the Applicant's HO is incorporated in Germany and is engaged in the business of promoting applied research. The HO has established their LO in Bangalore, India which is acting as an extended arm of the HO to carry out activities that are permitted by RBI. The RBI has stipulated certain conditions for the establishment of liaison office in India, which includes among other things, that LO will not generate income in India and will not engage in any trade/commercial activity, will represent in India the Parent Company, will promote technical/ financial collaborations and act as communication channel between the Parent Company and the Indian Company, the entire expenses of the office in India will be met exclusively out of the funds received from abroad through normal banking channels and it will not have any signing / commitment powers, except than those which are required for normal functioning of the office, on behalf of the HO/ Parent Company.

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7.6 The term 'Liaison Office' is not defined under the CGST Act 2017. However it is defined under **Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016** and as per the said definition, primarily it is a place of business. The RBI, who has permitted the applicant to establish a liaison office in India, under Regulation 4(b) also permits the applicant (LO) to carry out the following activities, specified under Schedule II.

- i. Representing the parent company / group companies in India.
- ii. Promoting export / import from / to India.
- iii. Promoting technical/ financial collaborations between parent/ group companies and companies in India.
- iv. Acting as a communication channel between the parent company and Indian companies.

The applicant has claimed that they are not "person" as per Section 2 (84) of CGST Act, 2017. However we find that the definition is very wide in scope and covers *every artificial juridical person, not falling within any of the above*; (Section 2 (84)(n) of CGST Act, 2017). A juridical person is a non human legal entity recognized by law with duties and rights. We observe that the RBI has recognized the applicant and conferred on them certain duties along with placing certain restrictions. Therefore, we observe that the applicant falls under the definition of "person" in terms of Section 2 (84) of CGST Act, 2017. Further, Section 2(17)(a) of the CGST Act 2017 stipulates that **"business" includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.** Further **"business" also includes any activity or transaction in connection with or incidental or ancillary to sub-clause (a)**, in terms of Section 2(17)(b) of the CGST Act 2017.

In the instant case the applicant contends that they are not covered under Section 2(17) of the CGST Act 2017, by mainly focusing on clause (a) of the said Section. We observe that the impugned liaison activity of the applicant actually falls under clause (b) of Section 2 (17) of CGST Act, 2017 as it is ancillary to the activities mentioned in clause (a) of Section 2 (17) of CGST Act, 2017. Further, it is to be noted that the definition of business for the purpose of GST is derived from its definition in the Act and RBI's injunction on business for the applicant can't decide the scope of business for the purpose of GST. In view of the above, we find that the applicant is involved in the business

7.7 Schedule I of CGST Act 2017, specifies certain activities to be treated as supply even without consideration. Para 2 of the said schedule I stipulates that *"Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business; provided that gifts not exceeding fifty thousand rupees in value in a*

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financial year by an employer to an employee shall not be treated as supply of goods or services or both”.

7.8 The applicant contends that the liaison office situated in Bangalore, is nothing more than an extended arm of the Head office (HO) and the liaison office performs no separate functions other than those specified and approved by the RBI; that the liaison office acts on behalf of the Head office/HO for its customers in India; that the Liaison office is neither related nor distinct persons, but are in fact working as employees of the Head Office and therefore, the activities performed by the liaison office to the Head office customers in India are considered to be provided by the Head office itself; that they are not related persons as there is only one legal entity and no relationship can be established. Further, they are not distinct persons under Section 25, as distinct persons should have two or more establishments. In this case, the liaison office is mere extension of the Head office and no separate identity can be established. Hence, they are neither related nor distinct persons, but are in fact working as employees of the foreign office. Accordingly, activities undertaken by the Liaison office are not covered under the definition of supply. In this regard, we refer to the concept of related persons as per the explanation to Section 15 of CGST Act, 2017.

Section 15 of the CGST Act 2017, at explanation (c) stipulates that **“persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, shall be deemed to be related”**. The applicant themselves have admitted that they are involved in promoting the business of the HO in India and they act on behalf of the Head office/HO for its customers in India. Thus the applicant (LO) and their head office (HO) are deemed to be related persons. We therefore conclude that the activities performed by the applicant falls under the scope of supply under Section 7 of CGST Act, 2017 read with schedule I of CGST Act, 2017 as it is in relation to furtherance of business. The applicant is involved in business and promotes the business, in India, of their HO situated outside India, in the course of business. Thus the activities of the applicant squarely fit to be treated as supply in terms of Section 7(1)(c) of the of CGST Act 2017, even in the absence of consideration.

7.9 Now, we examine the issue of payment of GST on the activities undertaken by them. In this regard, we will first examine whether the activities are covered under zero rated supply of services. Section 2(6) of IGST Act, 2017 defines “Export of services” as the supply of any service when:

1. The supplier of service is located in India ;
2. The recipient of service is located outside India ;
3. The place of supply is outside India ;
4. The payment of such service has been received by the supplier of service in convertible foreign exchange ; &



5. The supplier of service & the recipient of the service is not merely an establishment of a distinct person.

Section 8 of the IGST Act 2017, explanation 1(i) stipulates that “Where a person has an establishment in India and any other establishment outside India then such establishments shall be treated as establishments of distinct persons”. Further explanation 2 specifies that “A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory”.

In the instant case the applicant has representational office i.e. LO in Bangalore, India and hence the applicant has an establishment in India. Further the applicant’s head office is outside India and hence the applicant’s head office has an establishment outside India. Thus the applicant (LO) and their head office (HO) shall be treated as establishments of distinct persons, in terms of Section 8 supra. Therefore the applicant (LO) and their head office (HO) are distinct persons and the activities performed by them can’t be called export of services.

The applicant has claimed exemption by virtue of Sl. No. 10F of notification No. 09/2017-Integrated Tax(Rate) dated 28.06.2017 as amended by Notification No. 15/2018-IT (R) dated 26.07.2018. The condition mentioned in the Notification for claiming exemption is that the place of supply of service is outside India in accordance with Section 13 of IGST Act, 2017. Since this Authority is not eligible to decide the matter of place of supply as per Section 97 (2) of CGST Act, 2017, we will not be able to comment on the claim of exemption, claimed by the applicant. However, we proceed to comment on the submission made by the applicant that they are not an intermediary as per Section 2 (13) of IGST Act, 2017. There is no doubt that the applicant is facilitating supply between the HO and Indian customers. They have a mandate from RBI for this purpose. Further, they are not making any supply on their own, which anyway is a restriction placed upon them by RBI. Their contention that they are not “person” has already been dealt in the above para. We find that they are a distinct legal entity and are aptly covered under the definition of intermediary as per Section 2 (13) of IGST Act, 2017. Lastly, in regard to the submissions made by the applicant in respect of valuation, we observe that Rule 28 to Rule 31 of the CGST Rules, 2017 have to be resorted for the purpose of determining tax liability.

7.10 On the question whether they need to take registration, we observe that the supply of services by the applicant amount to inter-state supply of services in terms of Section 7(5) of the IGST Act 2017. Further persons making any inter-state taxable supply shall be required to be registered compulsorily in terms of Section 24 of the CGST Act 2017.



8. In view of the foregoing, we pass the following

R U L I N G

1. The liaison activities being undertaken by the applicant (LO) in line with the conditions specified by RBI amount to supply under Section 7(1)(c) of the CGST Act 2017.
2. The applicant (LO) is required to be registered under CGST Act 2017.
3. The applicant (LO) are liable to pay GST if the place of supply of services is India.


(Dr. Ravi Prasad M.P.)
Member MEMBER
Karnataka Advance Ruling Authority,
Bengaluru - 560 009

Place : Bengaluru

Date : 08-10-2020

To,

The Applicant

Copy to :


The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-20, Bengaluru

Office Folder


08-10-2020
(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority,
Bengaluru - 560 009

