

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) **Shri. Rajiv Mago**, Additional Commissioner of Central Tax, (Member)
(2) **Shri. T. R. Ramnani**, Joint Commissioner of State Tax, (Member)

| | |
|---|--|
| ARN No. | AD270120011672Q |
| GSTIN Number, if any/ User-id | 27AAACUI366N1ZO |
| Legal Name of Applicant | M/s. USV Private Limited |
| Registered Address/Address provided while obtaining user id | Arvind Vitthal Gandhi Chowk, BSD Marg, Govandi (East), Mumbai 400 088 Maharashtra |
| Details of application | GST-ARA, Application No. 92 Dated 16.01.2020 |
| Concerned officer | MUM-VAT-E-601, LTU-001, MUMBAI |
| Nature of activity(s) (proposed/present) in respect of which advance ruling sought | |
| A Category | Factory/Manufacturing |
| B Description (in brief) | Manufacturer of bulk drugs and formulations |
| Issue/s on which advance ruling required | (i) Classification of any goods or services or both (ii) Applicability of a notification issued under the provisions of this Act (vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. |
| Question(s) on which advance ruling is required | As reproduced in para 01 of the Proceedings below. |

NO.GST-ARA- 91/2019-20/B- 77

Mumbai, dt. 14.10.2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 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" respectively] by M/s. USV Private Limited, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether in facts and circumstances of the case, the activity of transfer of registered trademarks by Novartis AG to the applicant is a 'supply of goods' or supply of services' under the CGST, Act, 2017/IGST Act, 2017?
2. If the activity is held to be a supply of service, whether the applicant is liable to discharge Goods and Service Tax (GST) on the subject transaction under reverse charge mechanism in terms of entry no. 1 of Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017?

3. In case it is held to be a supply of service and the applicant is liable to discharge GST under reverse charge mechanism, whether the said 'supply of service' is classifiable under entry no. 17 (i) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended)?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions made by M/s USV Private Limited, the applicant, are as under:-

- 2.1 The Applicant, is a healthcare company in India, registered under the GST regime and Novartis AG ('NAG') is a Switzerland based pharma company which owns rights of Trade Marks (namely 'Jalra' and 'Jalra M') across the world including India. The said Trade Marks are registered in the name of NAG under the Indian Trade Marks Act, 1999 and the Trade Marks Rules, 2017 in India.
- 2.2 Vide a Deed of Assignment dated 30th November, 2019, NAG has agreed to permanently transfer (sell) the said Trademarks related to Indian territory to the applicant, with effect from the Effective Date' as stated in the Deed, and at an agreed consideration. As per para 1.1 of the said Deed of Assignment, NAG has agreed to sell, grants, assigns, conveys and transfers all the rights relating to subject Trademarks, from the Effective Date for consumption of products bearing the Trade Marks within the Indian territory, forever, for an agreed consideration in USD. The applicant paid consideration to NAG in two tranches on 04.12.2019 and 05.12.2019 thru Bank transfer.

Based on the GST Act and relevant notification issued thereunder, the applicant wishes to confirm whether the activity of transfer of registered trademarks by NAG to the applicant is a 'supply of goods' or 'supply of services' under the GST law?

2.4 **CLASSIFICATION OF PERMANENT TRANSFER OF REGISTERED TRADEMARKS AS 'SUPPLY OF GOODS' OR 'SUPPLY OF SERVICES.**

- 2.4.1 The term 'intellectual property right' has not been defined either under the CGST Act, 2017 or the IGST Act, 2017. However, under the erstwhile Service Tax regime, the term "intellectual property right" was defined and Trademark fell under the ambit / meaning of Intellectual property right'.
- 2.5 As per Entry 5(c) of schedule II to the CGST Act, 2017 - 'temporary transfer or permitting the use of enjoyment of any intellectual property right' is defined as a supply of service. Permanent

transfer of intellectual property rights is not covered under the said entry. Also, there is no deeming provision under the Act to deem the permanent transfer of Intellectual Property Rights' to be a service. As per Entry 1(a) of schedule II to the CGST Act, 2017 - 'any transfer of title in goods is a supply of goods'. The term 'goods' has been defined under Section 2 (52) of the CGST Act, 2017 to include every kind of movable property except for the ones excluded. The term 'movable property' has not been defined under the GST Acts. Hence, reference should be taken from the definition of the term 'movable property' as given in Section 3 (36) of the General Clauses Act, 1897 as property of every description, except immovable property.

2.6 Also, the Courts in a plethora of cases have consistently treated 'intellectual property rights' as 'goods' under the erstwhile Value Added Tax (VAT) / Central Sales Tax (CST) laws. Some of the case law is as under

- Lai Products Vs Intelligence Officer, 2018 TIOL 2639 HC Kerala VAT
- M/s Merk KGAA Germany Vs The State of Maharashtra 2016-TIOL-02 Tribunal - Mum-VAT

2.7 Accordingly, Intellectual Property Rights' shall be treated as 'goods'.

2.8.1 Further, entry no. 17 (i) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.17, which provides for the IGST rates on services, is as follows-

| Sl. No. | Chapter, Section or Heading | Description of Service | Rate (per cent.) | Condition |
|---------|--|--|------------------|-----------|
| 17 | Heading 9973 (Leasing or rental services without operator) | (i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software. | 12 | --- |

2.8.2 It is evident that this entry is covered under the main heading of 9973 - Heading (Leasing or rental services without operator). The scheme of classification of services for the heading 9973 (Group 99733) only provides for licensing services (temporary transfer) for right to use the IPR and does not envisage the permanent transfer of the IPR. Thus, even the said Scheme does not envisage the permanent transfer of IPR to be falling under the ambit of 'service'.

2.9 Entry no. 243 of Schedule II of Notification No. 1/2017-I.T. (R) dated 28.06.2017, was inserted by way of amendment to the said parent Notification, vide Notification No. 43/2017- I.T. (Rate) dt, 14.11.2017. Thus, the said entry did not exist prior to 14.11.2017. The very purpose of introduction of the said entry no. 243, can also be gauged from the agenda of minutes of the 23rd GST Council meeting, which is as follows-

"Agenda item 6(viii): GST Rate on permanent transfer of Intellectual Property The Secretary stated that the Council in its Meeting held in Srinagar on 18 May, 2017, had approved the rate of

tax at 12% on permanent or temporary transfer of Intellectual Property (IP) right in respect of goods other than Information Technology (IT) software. In order to remove the anomaly with reference to the rate of GST on permanent transfer of IP in respect of goods other than IT software, it was now proposed that 'Permanent transfer of Intellectual Property in respect of goods other than Information Technology software may be placed in the 6% rate list of goods and an entry may be inserted as Serial No. 243 in Schedule II of the notification No. 1/2017-CT(R) to read as 'Permanent transfer of Intellectual Property in respect of goods other than Information Technology software'. He further stated that the Council in its 18th Meeting held in New Delhi on 30 June, 2017 had approved the rate of 18% on permanent or temporary transfer of IP right in respect of IT software.

He added that as a result of this amendment (i) permanent transfer of Intellectual Property right in respect of goods other than Information Technology software would attract 12% GST; and (ii) permanent transfer of Intellectual Property right in respect of Information Technology software would attract 18% GST. He stated that with this amendment, temporary or permanent transfer of Intellectual Property (other than Information Technology software) would attract tax at the rate of 12% (irrespective of whether transfer of Intellectual Property is a supply of goods or services) and temporary or permanent transfer of Intellectual Property in respect of Information Technology software would attract 18% GST (irrespective of whether permanent transfer of Intellectual Property in respect of supply of Information Technology software is a supply of goods or services). This amendment was proposed as a dispute/litigation avoidance measure. The Secretary stated that this Agenda item was discussed during the officers' meeting held on 9 November, 2017 in Gandhinagar and agreed upon. He suggested that the Council could also agree to this proposal. The Council agreed to the proposal."

- 2.10 This also brings out the intention of the Council of not considering the permanent transfer of IPR as a 'service' but as 'goods'. Thus, permanent transfer of Intellectual Property Rights' should be treated as 'supply of goods'.

LIABILITY TO DISCHARGE GST UNDER REVERSE CHARGE MECHANISM

- 2.11.1 Entry No. 1 of Notification No. 10/2017- I.T. (Rate) dated 28.06.2017 notifies the category of supply of services wherein the whole of integrated tax leviable under Section 5 (1) of the IGST Act, 2017 is required to be discharged by the service recipient and is as under:-

| Sl.No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|--------|--------------------------------|---------------------|----------------------|
| 1 | 2 | 3 | 4 |

| | | | |
|---|---|---|--|
| 1 | Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. | Any person located in a non-taxable territory | Any person located in the taxable territory other than non-taxable online recipient. |
|---|---|---|--|

- 2.11.2 As per the said entry, any service supplied by any person located in a non-taxable territory to a person located in taxable territory, should be discharged by recipient of service.
- 2.11.3 Notification No. 4/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) which also provides for list of goods, on which the Integrated Tax required to be discharged by the recipient of supply does not cover the supply of intellectual property rights.
- 2.11.4 Thus, if the impugned activity of permanent transfer of Trademarks is classifiable as 'supply of service', IGST will be required to be discharged by the applicant. However, if the activity is classifiable as 'supply of goods', applicant will not be required to discharge IGST.

Applicant Submission Dated 27.09.2021:-

- 2.12 The subject transaction being a transfer of title in 'Goods' is a supply of goods and not a supply of service and hence payment of GST under reverse charge is not applicable.
- 2.13 In the subject case, liability may fall upon the applicant should the transaction contained in the subject agreement be held as a "supply of service" in which case this AAR may be called upon to determine whether the transaction is an import of service which in turn would involve a determination of "place of supply". In the case of *Sutherland Mortgage Services Inc. v. Principal Commissioner 2020 (35) G.S.T.L. 40 (Ker.)*, the Hon'ble Kerala High Court has observed that even though the issue relating to determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 97(2) of the CGST Act, the said issue relating to determination of place of supply, would come within the ambit of the larger issue of 'determination of liability to pay tax on any goods or services or both' as envisaged in clause (e) of Section 97(2) of the CGST Act. This decision of the Kerala High Court has been followed by this authority in the case of *Prettl Automotive India Pvt Ltd 2021 (46) G.S.T.L.319 (AAR-GST-Mah)*. Therefore, the advance ruling application made by the applicant is admissible.
- 2.14 The Hon'ble Supreme Court in the case of *Vikas Sales Corporation 2017 (354) E.L.T 006 SC* examined the definition of movable property under General Clauses Act, 1897, and held as under:-
- "Similarly, patents, copyrights and other rights in rem which are not rights over land are also included within the meaning of movable property."**
- 2.15 Further, the Hon'ble Bombay HC in the case of *Commissioner of ST Vs Duke and Sons*, has also relied on the decision of the Supreme Court in the case of *Vikas Sales Corporation Vs*

Commissioner of Commercial Taxes and has held that trademarks are goods within the meaning of clause (5) of Section 2 of the 1985 Act.

- 2.16 The above cited case laws leave no room for ambiguity that "Trademarks" will be considered as "Goods" for the purposes of CGST Act, 2017.
- 2.17 As per Entry 1(a) of schedule II to the CGST Act, 2017 – 'any transfer of title in goods is a supply of goods'. The transaction in question is a transfer of title in goods (Trademark) and hence, will be **supply of goods** as per Schedule II of CGST Act.
- 2.18 The rate notification for services uses the term "permanent transfer" of IPR at sr.no.17 thereof. It is submitted that mere mention of the term "permanent transfer" in the services rate notification will not be determinative of the classification of the transaction in question. Also it is to be noted that the term "permanent transfer" is specifically mentioned in entry no. 243 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. Therefore, any permanent transfer of intellectual property such as trademark, has to be construed as a supply of goods only and not supply of services.
- 2.19 Classification of a transaction cannot be decided based on entries in the exemption or rate notification. The Hon'ble CESTAT in the case of L.M. Wind Power Blades (India) Pvt Ltd Vs Commissioner of Customs, Tuticorin, 2015 (327) ELT 641 (Tri-Chennai) has held that "Only after classifying the goods into correct chapter headings, under respective chapter of CTA or CETA, the question of extending of notification benefit or rate of duty to be finalised and not vice versa" (emphasis supplied). Therefore, classification of the goods has to be first decided as per the provisions of the CGST Act and thereafter the appropriate rate notification (whether for goods or services) to be applied to the transaction in question.

The subject transaction being a 'supply of goods' cannot be considered as a 'supply of services' and by corollary, the subject transaction will also not come within the ambit of 'import of service' so as to attract GST liability under the reverse charge mechanism.

03. CONTENTION – AS PER THE CONCERNED OFFICER;
OFFICER SUBMISSION DATED 27.09.2021:-

- 3.1 As per the impugned deed of assignment, the Assignor (NAG) is the owner of the said trade marks in India. The Assignor i.e NAG has permanently transferred the entire benefits, rights, title, claim, property and interest whatsoever in and into the Trade Marks to applicant.
- 3.2 Section 3 of General clauses Act 1897 defined the term movable and immovable property as follows :- 3 (26) "immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

- 3 (36) "movable property" shall mean property of every description, except immovable property; In view of above definitions, it can be concluded that, intellectual property rights not being immovable property falls under term movable property.
- 3.3 Further, according definition of section 2(52) of CGST/SGST Act "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops; grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Thus, as per the said definition the term goods include every kind of movable property except for the ones excluded. In view of above facts and provisions of law, intellectual property rights is movable property, hence, trademark Jalra and Jalra M of "pharmaceutical preparations falls under definition of goods under GST law.
- 3.4 Entry no. 17 of Notification No 8/2017-I.T.(Rate) dated 28.06.2017 provides for IGST rates of services, temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software. Entry no.243 of schedule II of Notification No 1/2017 I.T. (Rate) dated 28.06.2017, provides for IGST rates of goods, Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software".
- 3.5 Since permanent transfer of IPR has been treated as goods and services under scheme of classification vide notification 1 and 8 of IGST rates, whether permanent transfer of IPR is covered under heading 99733 to scheme of classification of services or Serial No. 243 to scheme of classification of goods. Heading 99733 to scheme of classification of services provides for permitting, granting, or authorizing the use of intellectual property products wherein license is granted by the supplier to the recipient to use IPR.
- 3.6 License is a permission given to a person to do or enjoy something that otherwise he does not have the legal right to do or enjoy. A licensor does not transfer any proprietary interest to the licensee but the recipient is only allowed to use IPR. Thus, there is no transfer of title/ownership under license agreement. Once title/ownership is transferred, it is considered as 'assignment' resulting into permanent transfer of IPR wherein assignee becomes the owner of the right assigned and can exercise its rights suo moto.
- 3.7 Since the term 'permanent transfer is mentioned for both categories viz. goods and service, However, the heading of 9973 reads as "*Leasing / rental services with or without operator*". The heading of 9973 therefore makes clear that the scope of the heading is limited only to the particular services mentioned in the heading. Notwithstanding the broad language of the contents of heading 9973, its scope does not cover services other than those mentioned in the heading

- 3.8 Therefore, an assignment is a transfer title of the IPR and treated as supply of goods under GST whereas a license is only permission given for consideration to use IPR, and no transfer of title/ownership. Hence, assignment of goods under GST would be considered as goods while granting license of IPR under GST is treated as services.
- 3.9 In the instant case, it is apparent from the clauses of the agreement that, Novartis AG has permanently transferred the entire benefits, rights, title, claim, property and interest whatsoever in and into the Trade Marks to applicant. Hence, assignment of trademark Jalra and Jalra M in respect of 'pharmaceutical preparations' to applicant is supply of goods under provisions of GST law.
- 3.10 In view of above discussion, facts of the case and provisions of GST law, this office is of opinion that, activity of assignment of trademark Jalra and Jalra M by NAG to the applicant is supply of goods. Since it is not supply of service it will not be covered by entry no 1 of Notification No 10/2017-Integrated Tax (Rate) and entry no 17 (i) of Notification No 8/2017 Integrated Tax (Rate) dated 28.06.2017 (as amended).

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 11.02.2020. Shri. Sanjeev Nair, Advocate, Shri. Kevin Gorgi, CA, Shri Vinay Potdar and Shri. Yogesh Mistry, both, Company Representatives, appeared, and requested for admission of the application. Jurisdictional Officer Shri. Prashant Patil, Deputy Commr., E-601, LTU-1, Mumbai also appeared.
- 4.2 The application was admitted and called for final e-hearing on 28.09.2021. The Authorized representatives of the applicant, Shri. Sanjeev Nair , Advocate, Shri Kevin Gorgi, Advocate, Shri. Yogesh Mistry, Sr. DGM Supplier Chain, and Shri. Sandeep Naik, AGM Accounts were present. The concerned jurisdictional officer Shri. Prashant Patil, DC, E-601, Mumbai was present.
- 4.3 We heard both the sides.

05. DISCUSSIONS AND FINDINGS:

- 5.1 We have gone through the facts of the case, written and oral contentions made by both, the applicant and jurisdictional officer at the time of preliminary as well as the final hearing.
- 5.2 We find that the applicant, M/s USV Private Limited situated in Mumbai, Maharashtra at Arvind Vitthal Gandhi Chowk, BSD Marg, Govandi (East), has entered into a Deed of Assignment dated 30th November, 2019 with Novartis AG ('NAG'), a Switzerland based pharma company wherein NAG has agreed to permanently transfer (sell) the rights of Trade Marks (namely 'Jalra' and 'Jalra M') which it owns, across the world including India. The said Trade Marks are registered in the

name of NAG under the Indian Trade Marks Act, 1999 and the Trade Marks Rules, 2017 in India. The said Trademarks related to Indian territory are permanently transferred by NAG to USV with effect from the 'Effective Date' as stated in the Deed, and at an agreed consideration. The effective date as per the impugned agreement is 10th December, 2019 OR receipt of the entire consideration amount by the Assignor (in this case, NAG), whichever is later. The applicant has submitted that they have paid full consideration to NAG in two tranches on 04.12.2019 and 05.12.2019 thru Bank transfer. Thus, as per the agreement the effective date of the permanent transfer of the impugned Trademarks is 10th December, 2019. Further, we find that the supply in this case is undertaken by NAG, Switzerland. In other words the applicant is the recipient of the subject supply.

5.3 The first question raised by the applicant is as under:-

Whether in facts and circumstances of the case, the activity of transfer of registered trademarks by Novartis AG to the applicant is a 'supply of goods' or supply of services' under the CGST, Act, 2017/GST Act, 2017?

5.4.1 From a careful reading of the first question it is seen that the subject supply is undertaken by NAG and not the applicant. Therefore we now reproduce relevant clause (a) of Section 95 of the CGST Act defines 'advance ruling' which is as under:-

(a) "Advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant

5.4.2 As per Section 95 (a) there are two conditions to be fulfilled for making an advance ruling application: firstly, the question asked should be in relation to supply undertaken by the applicant and secondly the question should be in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5.4.3 We find that in the subject case, the first condition mentioned above is not satisfied in as much as it is NAG, Switzerland which is undertaking the supply and not the applicant.

5.4.4 Further, with respect to the second condition for the supply 'to be undertaken or proposed to be undertaken' we observe that the Deed of Assignment is dated 30th November, 2019, and the 'Effective Date' as stated in the Deed is 10th December 2019. The application has been filed on 16th January 2020.

5.4.5 Hence we find that, on the date on the filing of the subject application the subject supply was already completed and was neither being undertaken, nor was proposed to be undertaken.

5.4.6 In view of the above facts we find that the applicant/application does not satisfy the conditions of Section 95 of the CGST Act, 2017 and is therefore rejected as being not maintainable. Therefore, the second and third questions are not taken up for discussion.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus

Based on the submissions made by the applicant and hearings conducted, the subject application is rejected as being non-maintainable as per Section 95 of the CGST Act, 2017 because the applicant has firstly raised questions as a recipient of services and secondly the questions are in respect of past and completed supply as on the date of the application and not supply, which is being undertaken/proposed to be undertaken.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.