

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present:

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600034	Tmt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600003
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Advance Ruling No.07/ARA/2023 Dated:31.03.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.
5. 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.

GSTIN Number, if any / User id	33AAJCP0446R1Z0
Legal Name of Applicant	Profisolutions Private Limited
Registered Address / Address provided while obtaining user id	First Floor, No.G82, 10 th Street, Anna Nagar, Chennai – 600102.
Details of Application	GST ARA – 01 Application S1.No.32/2022 dated 27.05.2022
Jurisdictional Officer	Centre : Chennai North Commissionerate ; Division: Purasawakkam.
Concerned Officer	State : Kilpauk Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Service provider
B Description (in brief)	Applicant is a Private Limited Company having Branch office at Chennai, in the State of Tamil Nadu providing service help, through the employees of the company, to main office / registered office at Bengaluru in the State of Karnataka.
Issue/s on which advance ruling required	1. Determination of the liability to pay tax on any goods or services.
Question(s) on which advance ruling is required	1. Whether the services provided to Head Office will attract GST liability?

1. The applicant submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The Applicant registered under the Companies Act 2013 in the State of Karnataka, have branch office at Chennai and the branch office is registered in the State of Tamil Nadu under GST Act for providing engineering services for industrial and manufacturing projects.

2.2 The branch office of the applicant is providing support services like engineering services, design services, accounting services, etc to the Head Office at Bangalore and also registered in the State of Karnataka under GST Act.

2.3 On interpretation of law, applicant states that employees are appointed and working for the company as whole and not employed for head office or branch specifically, which is a distinct person under GST.

2.4 Salary and benefits paid to employees are in relation to employment, which is neither a supply of goods nor services under para 1 of the schedule 3 of CGST Act, which reads as 'Services by an employee to the employer in the course of or in relation to his employment'.

3. The applicant, after consent, was given an opportunity to be virtually heard on 12.01.2023. The Authorized Representative (AR) Sri Ganesh Bhat, of the applicant appeared before the authority and reiterated the submissions. When asked about the nature of service provided by the applicant to the head office at Bengaluru, AR stated that support services like engineering services, design, accounts services, etc are provided by the common employees of the applicant company in Tamil Nadu to Head Office of the applicant company in Karnataka. AR stated that no invoice is issued and no GST is paid for provision of the said services.

4. The applicant is under the administrative control of Central Tax. The said jurisdictional authority was addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised. The said authority vide letter dated 01.12.2022 stated that there are no pending proceedings on the issue raised by the applicant in the ARA application. It is further stated that service provided to Head Office will attract GST liability as per para (2) of Schedule I of CGST Act, 2017 which reads as "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 the business".

5. The concerned State Tax Officer has not informed about existence of any pending proceedings against M/s Profisolutions Private Limited on the issue raised by the applicant.

6.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing and the comments furnished by the Centre and State Tax Authorities. The applicant filed advance ruling application for determination of the liability to pay tax on service, within the meaning of that term as per Section 97(2)(e) of GST Act, 2017.

We also take cognizance of the fact that subject matter of the application viz rendering of service by branch office in one State to head office in another State continues, thereby fulfills the requirement of Section 95(a) of the Act.

6.2 The question which needs to be answered is whether providing service by branch office in one State to head office in another State through employees who are common to the company constitute supply of service in terms of Section 7 the Act, if so, whether such services attract GST liability.

7.1 It is seen from the submissions and documents discussed in para 3 supra that the applicant from branch office has supplied, apart from accounting services, various technical services to head office in other State where the factory is located to fulfill the product design requirement of the customers.

7.2 The applicant states that employees are appointed and working for company as whole and not employed for head office or branch specifically, while recognizing the legal position that head office and branch office are distinct person under GST. It is obvious that service of an employee working in a branch flows only through the branch to the head office or customer. As long as the employee is deployed in a branch of an entity, his services that is rendered directly to head office will be in his representative capacity as an employee of the branch.

8. For ease of reference, the relevant statutory provisions of the Act are reproduced below;

8.1 As per Section 7(1) (c), supply includes 'the activities specified in Schedule I, made or agreed to be made without a consideration'.

8.2 As per Section 5(1) of IGST Act, 2017, 'subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person'.

8.3 Schedule I (2) to CGST Act, 2017 states 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' to be treated as supply even if made without consideration.

8.4 Section 25(4) of CGST Act, 2017 states that 'a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

8.5 Explanation to Section 15 of CGST Act, 2017 states that 'For the purpose of this Act,-

- (a) persons shall be deemed to be " related persons " if-
 - (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term " person " also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

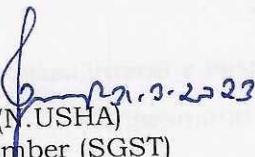
8.6 From comprehensive reading of the statutory provisions of relevant Acts, any supply of service between two registrations of the same person in the same State or in different States attract the provisions of Section 25 (4) and Section 7 read with Schedule I (2) and Section 15.

8.7 Even the services of employees deployed in a registered place of business to another registered premises of the same person will attract the provisions discussed in para 8.6 supra, as the employees are treated as related person in terms of explanation to Section 15 and treated as supply by virtue of Schedule I (2) to CGST Act, 2017.

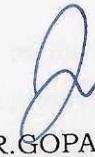
9. In view of the above, we rule as under;

RULING

Services, including the services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability under respective Acts, viz IGST Act, 2017 or CGST Act, 2017 and SGST Act, 2017 or UTGST Act, 2017.


(N. USHA)

Member (SGST)


(R. GOPALSAMY)

Member (CGST)

31/03/23



To

M/s Profisolutions Private Limited,
First Floor, No.G82, 10th Street,
Anna Nagar East, Chennai – 600102

//By RPAD//

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Principal Commissioner of GST & C.Ex.,
Chennai North Commissionerate.
4. The Assistant Commissioner,
Kilpauk Assessment Circle, Chennai.
5. Master File / spare – 1.