

Financial assistance received in lieu of services to be provided by Indian subsidiary company to holding company in Germany is a supply of service

The Hon'ble AAR Maharashtra in *M/s. Prettl Automotive India Private Limited [Order No. GST-ARA-20/2019-20/B-59 dated December 15, 2020]* held that financial assistance to be received by the Indian subsidiary is a 'consideration' for supply and agreeing to do some acts under contract for the activity of imparting training to students, unskilled workers etc. by an Indian Subsidiary pursuant to financial-aid received under Germany's economic programme for developing countries is 'supply of service' classifiable under SAC Heading 999792 vide *Notification-11/2017 - Central Tax (Rate) dated June 28, 2017 ("Services Rate Notification")*, which pertains to "Agreeing to do an Act".

Facts:-

M/s. Prettl Automotive India Pvt. Ltd, Pune ("**Applicant**") is engaged in the supply of electric transformers, static converters, electric wires/ cables for transmission of electricity, equipment for spark ignition, installation and commissioning services. Prettl Kabelkonfektion GmbH, Germany, ("**Prettl Germany**") Applicant's holding company, desires to join the developPPP.de programme ("**program**") run by the German Federal Ministry for Economic Cooperation and Development. Prettl Germany desires to provide financial assistance of 540,000 Euro to the Applicant under the said program therefore, proposed to enter into a Service Contract requiring the Applicant to:

- a) Construction of a separate 400 sqm training center within a 2,500 sqm production hall, divided into a theory room and a practical training workshop;
- b) Implementation of training measures for trainers, apprentices, unskilled workers and students or college graduates as well as integration of teaching content at four educational institutes;
- c) One-year training of 80 vocational students (20 mechanics and 60 electrical engineers from the Industrial Training Institute Pune and Don Bosco)
- d) Two-year training of 350 unskilled workers to become mechanics, electricians, mechatronics technicians;
- e) Qualification of 25 college graduates as application and design engineers;
- f) Qualification of four suppliers to obtain PRETTL certification;
- g) All other activities not expressly listed here which are necessary for the successful completion of the program.

Issues:-

1. Whether the financial assistance to be received by the Applicant is a consideration for supply and the activity is covered under the meaning of supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 (“CGST Act”)?
2. If the above activity is not considered as 'supply of services' then whether the said activity is to be considered as “exempted supply' or 'non-taxable supply and accordingly input tax credit is to be reversed in accordance with Section 17 of CGST Act, read with Rule 42 of Central Goods and Services Tax Rules, 2017 (“CGST Rules”)?
3. If the above activity is considered as supply of service, then whether the same is classifiable under SAC 9997 as other services nowhere else classified under Serial No. 35 of the Services Rate Notification?
4. Where the said activity if considered as supply of service, then whether the same is covered as “Zero Rated Supply and qualifies as “export of service under the provisions of Integrated Goods and Services Tax Act, 2017 (“IGST Act”) and can be exported without payment of IGST?

Held:-

The Hon’ble AAR Maharashtra in ***Order No. GST-ARA-20/2019-20/B-59, dated December 15, 2020*** held as under:

- Observed that, there is an intention to promote investments of German companies in India for which training of various skilled and unskilled categories will be done by the Applicant in India and the consideration towards supply of such service, in the guise of financial assistance, will be received by the Applicant and the entire transaction is to be taken up under a service contract. The very fact that the Applicant has mentioned that a service contract has been proposed implies that there is an expectation that some kind of service will be provided by the Applicant to its holding company, which is a separate legal entity.
- Further observed that, Prettl Germany intends to build up a workbench in India, to produce their products and benefit from lower value-add costs, since the auto motive business and cable business are extremely competitive. Hence the activity undertaken by the Applicant in India, under a contract with Prettl Germany is towards such buildup of workbench to produce their products, if required. Hence, as per the agreement, Applicant has consented/agreed to do some acts and as per clause 5 of Schedule II appended to CGST Act.
- Hence, the Applicant is rendering supply of services for which it is receiving consideration in the form of “financial assistance” since they are being given to the Applicant in lieu of certain supply of services to be effected by the Applicant on the directions of Prettl Germany.

- Since it is held that the subject activity is to be treated as supply of services and financial assistance received, is a consideration for such supply, the AAR did not answered the second question raised by the Applicant for discussion.
- Noted that, it cannot be said that the Applicant is involved in education per se since the element of normal schooling is absent. Further, the Applicant has also agreed that it is not imparting any classroom training, knowledge & lessons & thereby not running any educational institution & also not issuing any degree or diploma certificate to students & beneficiaries. In fact, the Applicant has submitted that they are not providing any Education services to anyone. The entire activities undertaken by the Applicant are only as per the contract, implying that, in the absence of such contract, the Applicant would not undertake the said activities.
- Hence it is clear that, the Applicant is obliged to perform the subject activity, i.e., to do an act, under the terms of the impugned agreement. The AAR did not agree with the submissions made by the Applicant with respect to classification of services rendered by Applicant. The Applicant has agreed to do acts under the contract and therefore their supply is to be classified under SAC Heading 999792 under Services Rate Notification which pertains to “Agreeing to do an Act”
- Analyzed Section 13(5) of the IGST Act and held that the entire gamut of supply as per the agreement between the Applicant and Prettl Germany, will be performed in India and therefore the AAR held that the place of supply, being event based in the subject case, is in India. The subject transaction does not satisfy the condition mentioned in clauses (iii) of Section 2(6) of the IGST Act i.e., place of supply of service is outside India, therefore the said transaction cannot be considered as export of services under the IGST Act.

Our comments:

It is to be noted that after insertion of sub-clause (1A) in Section 7 of the CGST Act (inserted vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. July 1, 2017), the transaction falling under Schedule II of the CGST Act does not by itself amount to supply. In order to fall under the expression supply, transaction should meet with the criteria mentioned in Section 7(1) of the CGST Act. Schedule II ibid is only for the purpose of classification of supply either as supply of goods or as supply of services. However, the above AAR has relied on unamended provisions of Section 7 of the CGST Act to give the ruling.

Relevant Provisions:-

Clause 5 of Schedule II of the CGST Act:

“Activities or transactions to be treated as supply of goods or supply of services-

5. Supply of services

The following shall be treated as supply of services, namely:-

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.-For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; (20 of 1972.) or

*(ii) a chartered engineer registered with the Institution of Engineers (India);
or*

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.”

Section 13(5) of the IGST Act:

“13. Place of supply of services where location of supplier or location of recipient is outside India-

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.”

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