

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata - 700015

Name of the applicant	Global Reach Education Services Pvt Ltd
Address	Unit 7W, The Millenium, 235/2A, AJC Bose Road, Kolkata-700020
GSTIN	19AAGCG0859E1ZK
Case Number	05 of 2018
Date of application	22 th January 2018
Date of advance ruling	21 st March, 2018
Applicant's representative heard	Sri Pulak Kumar Saha, CFA, Partner, Price Waterhouse & Co LLP

1. The Applicant states that it provides Overseas Education Advisory whereby it promotes the courses of foreign universities among prospective students and wants a ruling on whether the service provided to the Universities abroad is to be considered "export" within the meaning of Section 2(6) of the Integrated Goods and Services Act, 2017, (hereinafter referred to as "the IGST Act"), and, therefore, a zero-rated supply under the CGST / WBGST Act 2017 (hereinafter referred to as "GST Act").
2. The Applicant submits that it is providing the above services to the foreign universities, for which it receives consideration in convertible foreign exchange. The service recipient is located outside India and is not an establishment of a distinct person in accordance with Explanation 1 to section 8 of the IGST Act. The place of supply of the services is outside India in terms of section 13(2) of the IGST Act. The supply of services by the applicant should, therefore, be treated as export of service within the meaning of section 2(6) of the IGST Act.
3. The argument of the applicant is based on the following premises. It is provisioning service of promotion of the university courses among the prospective students and receives consideration for it as an independent service provider. In other words, it is not providing any intermediary service. The place of supply should, therefore, be determined under section 13(2) and not under section 13(8)(b) of the IGST Act. The place of supply should, therefore, be the location of the recipient outside India. This being the case, its service to the foreign universities should be treated as export within the meaning of section 2(6) of the IGST Act.

4. The concerned officer has objected to admission of the application on the ground that determination of the place of supply is beyond the jurisdiction of the Advance Ruling Authority. The objection appears misplaced. Although place of supply is an important factor in determining whether a provisioning of service qualifies as export, the issue, in the present context, is not determination of place of supply, but whether the applicant is providing the recipient an intermediary service and making a taxable supply of service and liable to pay tax thereon. Advance ruling is admissible on this question under section 97 (2)(a) & (e) of the GST Act.
5. There is no dispute regarding what the place of supply should be if the applicant is an agent providing an intermediary service to the foreign universities. Had there been such a dispute, this Authority would rather not provide a ruling on this issue at all. This Authority enters the question of whether the service provided by the applicant is classifiable as export from the limited angle of probing whether the applicant is providing an intermediary service.
6. The Applicant also declares that the question raised in the Application is not pending or decided in any proceeding under any provision of the Acts referred to above. The Application is, therefore, admitted.
7. The Applicant is stated to be engaged in Overseas Education Advisory whereby the various courses of foreign Universities are promoted in India among prospective students. The Applicant has tied up with various Universities all over the world. These Universities engage entities like the applicant for promotional and marketing activities for promotion of the courses taught by them and making the prospective students aware about the course fee and other associated costs, market intelligence about the latest educational trend in the territory and ensuring payment of the requisite fees to the Universities if the prospective students decide upon pursuing any course promoted by the Applicant. The Applicant receives consideration in the form of commission from the foreign University for these services rendered to prospective students. The Applicant, therefore, submits that the principal supply, therefore, is the service of promoting the courses of the Universities abroad, and the services incidental thereto are naturally bundled to the composite supply of business auxiliary services.

8. The applicant further states that it is not acting as an intermediary or agent in terms of section 2(13) of the IGST Act, as it supplies the main service (i.e. promotion of the University courses) on its own account. It does not facilitate provision of service by such Universities to the students. Its role is limited to only promoting the courses in India and thus, earns consideration out of it. The Applicant says that the agreements between the Universities abroad and the Applicant clarify that the relationship between them is not one of Principal and Agent. This being the case, the place of supply should be the location of the recipient outside India in terms of Section 13(2) of the IGST Act.
9. The Applicant submits at the time of Personal Hearing a copy of the Agreement with the Australian Catholic University (hereinafter referred to as “the Agreement”), in support of its argument. Since this Agreement with a specific University, namely, Australian Catholic University, has been submitted by the Applicant to further its arguments, the Agreement may be considered as the prototype of all Agreements made with the various Universities abroad and all discussions regarding the Agreement is to be taken as relevant to and applicable for all the Agreements entered into by the Applicant with the Universities abroad.
10. The Applicant further submits that it receives consideration for providing the above services to the foreign Universities, in convertible foreign exchange. The service recipient is located outside India and is not an establishment of a distinct person in accordance with Explanation 1 to Section 8 of the IGST Act. The place of supply of the services is outside India in terms of Section 13(2) of the IGST Act. The supply of services by the applicant should, therefore, be treated as Export of Service within the meaning of Section 2(6) of the IGST Act.
11. Section 2(6) of the Integrated Goods And Services Tax Act, 2017, reads as “ “export of services” means the supply of any service when -
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8;”

12. It is, thus, evident from the above citation that in the case of Export of Services all the conditions as laid down under Section 2(6) of IGST Act 2017 is to be followed in totality without any violation, and that there is no scope of partial compliance of the conditions laid down therein.

13. In the copy of the Agreement the Applicant is defined as an Education agent (Definition Clause 1.1). Under Clause 2 of the Background forming part of the Agreement, it is stated that the University engages Education Agent to be its representative in the territory and on the terms set out in the Agreement. However, it is clarified under Clause 2.3 (b) that the Education Agent, engaged by the University is an independent contractor, is not an agent of the university. The two clauses are clearly contradictory.

14. Clause 2.3 of the Agreement is stated below for ready reference:

“2.3 The Education Agent is engaged as an independent contractor by the University. For the avoidance of doubt the relationship between the Education Agent engaged under this agreement under University;

- a. is not one of employer and employee; and
- b. is not one of principal and agent.”

15. The nature of the relationship should, therefore, be ascertained from other clauses of the Agreement.

Under Clause 3.1 of the Agreement the Education Agent must promote the courses of the University to find out suitable prospective students and assist in recruitment of students in accordance with the procedures and requirements of the University. The Education Agent must assist the prospective students with all necessary information and assistance in completing the forms and submitting them to the University. While doing so, the Education Agent must meet the enrolment and other performance targets mutually agreed upon. Clause 4.1 puts the Education Agent under obligation to collect all fees and charges payable from the

prospective students and forward the same to the University and ensure that relevant fees and charges accompany all applications and acceptance of offer documents. The University pays consideration in the form of commission to the Education Agent under Clause 8 read with Schedule I of the Agreement as a percentage of the tuition fee for each student recruited / enrolled through the Education Agent, provided, the University has received the respective course fees.

16. It is clear from the above discussion that the main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission on the basis of course fee and recruitment through the applicant. Promotion of the courses is incidental to the above principal supply. While providing the above service the applicant is subject to audit by the University under clause 9.2 of the Agreement, which includes fulfilling recruitment targets. The University will review the Applicant's performance under Clause 9.4, especially with respect to recruitment targets achieved. The Applicant cannot claim any consideration for its promotional activity unless the students get enrolled through it. If the students get enrolled directly by the University through distant education or online services, the Applicant will not be paid any consideration whether or not it has provided any promotional service (Clause 8.3 of the Agreement). In fact, the Applicant is not allowed to undertake any promotional or advertising activity without prior written approval from the University [clause 4.4(h) of the Agreement]. Apart from the above consideration received from the University, the Applicant is not allowed to receive any fees or charges from the students or deduct anything from the charges or fees payable by the students to the University [clause 4.4(i) of the Agreement].

17. The Applicant argues at the time of Personal Hearing that payment of consideration based on recruitment is merely the mechanics for determining the quantum of consideration payable. It has no bearing on the applicant's standing as an independent service provider. We fail to appreciate the argument's merit. If promotion of university courses were the principal supply, the applicant should have been remunerated for its promotional activity no matter whether it facilitates recruitment or not. If the Applicant receives 'commission' based on recruitment/enrolment through it,

the principal supply is clearly facilitating the foreign university in recruitment/enrolment with promotional services ancillary to the principal supply.

18. It is evident from the above discussion that the Applicant is facilitating recruitment / enrolment of students to foreign Universities. Promotional service is incidental and ancillary to the above principal supply and the Applicant is paid consideration in the form of Commission, based on performance in recruiting students, as a percentage of the tuition fee collected from the students enrolled through the Applicant. The Applicant, therefore, represents the University in the territory of India and acts as its recruitment agent. In fact, Clause 2.1 of the Background forming part of the Agreement clearly says, "The University engages the Education Agent to be its representative to perform the Services from the commencement date in the Territory and on the terms set out in this Agreement until the Expiry date." *It is, therefore, clear that whatever services the applicant provisions are provided only as a representative of the University and not as an independent service provider.*

19. Being an intermediary service provider, the place of the Applicant's supply shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act. The place of supply under the above legal framework is the territory of India. As the condition under section 2(6)(iii) of the IGST Act is not satisfied, the Applicant's service to the foreign universities does not qualify as "Export of Services", and is, therefore, taxable under the GST Act.

In view of the foregoing we rule as under

RULING

The services of the applicant are not "Export of Service" and are taxable under the GST Act.

This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

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(VISHWANATH)

Member

West Bengal Advance Ruling Authority

Sd-

(PARTHA SARATHI DEY)

Member

West Bengal Advance Ruling Authority