

April, 2018

The Joint Commissioner (Legal),
Directorate of Commercial Taxes
14, Beliaghata Road
Kolkata – 700015.

Respected Sir,

Sub: Filing of appeal to Advance Ruling under Section 100 of the Central Goods and Service Tax Act, 2017 and West Bengal Goods and Service Tax Act, 2017, Section 20 of the Integrated Goods and Service Tax Act, 2017 read with Rule 106 of the Central Goods and Service Tax Rules, 2017 and West Bengal Goods and Service Tax Rules, 2017

Please find enclosed **four sets** of the following documents in connection with the above:

1. Form GST ARA – 02 accompanied by 4 copies of the statements and documents attached to the application.
2. Acknowledgement copy for **INR. 20,000.00** drawn in favour of the Commissioner of Central Goods and Service Tax in the manner as specified in Section 49 of the said act.

Kindly acknowledge the receipt of the above documents and do the needful.

Thanking you,

Yours Faithfully,

For, **M/s Global Reach Education Service Private Limited**

Santanu Bag.

Mr. Santanu Bag
Group Finance & Accounts Supervisor
(Authorised Signatory)

APPEAL TO THE APPELLATE AUTHORITY FOR ADVANCE RULING

FORM GST ARA - 02

[See Section 100(1) of Central GST, Act 2017 and
Rule 106(1) and 107A of Central GST Rules, 2017]

**BEFORE THE HONORABLE WEST BENGAL APPELLATE AUTHORITY FOR
ADVANCE RULING, KOLKATA**

APPEAL NO. 01 OF 2018

Sr. No.	Particulars	Remarks
1	Advance Ruling No.	05 of 2018
2	Date of communication of the advance ruling	28.03.2018
3	GSTIN / User id of the appellant	19AAGCG0859E1ZK
4	Legal Name of the appellant.	Global Reach Education Services Pvt. Ltd.
5	Trade Name of the appellant (optional).	Global Reach Education Services Pvt. Ltd.
6	Address of appellant at which notices may be sent	Unit - 7W, The Millennium 235/2A A.J.C. Bose Road, Kolkata 700020, West Bengal

7	Email Address of the appellant	ravi@globalreachonline.com
8	Mobile number of the appellant	+91 9836359350
9	Jurisdictional officer / concerned officer	Kolkata South CGST & CX Commissionerate Ballygunge Division Room No – 333 Range – IV GST Bhawan 180, Shantipally, Rajdanga Main Road Kolkata – 700107 West Bengal, India
10	Designation of jurisdictional officer / concerned officer	Senior Joint Commissioner, State Tax, Kolkata(South) Circle, 14 Beliaghata Main Road, Kolkata-700015
11	Email Address of jurisdictional officer / concerned officer	N.A
12	Mobile number of jurisdictional officer / concerned officer	N.A
13	Whether the appellant wishes to be heard in person?	Yes, the Appellant wishes to be heard in person
A.	The facts of the case (in brief)	The Statement of relevant facts has been enclosed as Exhibit I
B.	Ground of Appeal	The Ground of present Appeal has been enclosed as Exhibit II
C.	Payment details	CIN: ICIC18041900287695 Date: 24/04/2018

EXHIBIT I

FACTS OF THE CASE

We, M/s Global Reach Education Services Pvt. Ltd. (**'Appellant'**) are a private company incorporated under the Companies Act, 2013 and registered under the Goods and Services Tax Act, 2017 with registration no. 19AAGCG0859E1ZK. The Appellant is primarily engaged in promoting the courses of Foreign Universities in the India among the prospective students.

On 17.01.2018, the Appellant had filed an application, in Form GST ARA-01 before the Office of the West Bengal Authority for Advance Ruling, Kolkata for obtaining a Ruling. The Application was made within Section 97 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), for deciding the determination of liability to pay GST on Appellant's output services. The Application of the Appellant was admitted on records, and after the course of personal hearing, the Ld. Authority for Advance Ruling ('AAR' or the 'Adjudicating Authority') pronounced the Ruling No. 05 of 2018 ('Ruling') in accordance with Section 98(4) of the CGST Act.

Aggrieved by the said Ruling, the Appellant is preferring present Appeal within the prescribed time of thirty days from the date of which ruling was communicated to the Appellant i.e. 27.03.2018. The relevant facts, having a bearing on the case, are as follows:

1. That, the Appellant is providing services (classified as 'Business Auxiliary Services' under the extant service tax laws), to the Foreign Universities, for which it receives consideration in convertible Foreign exchange.
2. That, the services primarily involve undertaking promotional and marketing activities for promoting Foreign University courses, making students aware of other costs associated with staying and studying abroad, and providing Foreign Universities with market intelligence about the latest education trend in India.
3. That, the Appellant has no role in 'education services' provided by the Foreign Universities and furthermore no consideration or remuneration is received by the Appellant from the students.
4. That, there are certain services mentioned in the Agreement which Appellant has entered into with the Foreign Universities, but those services are not provided by the Appellant. It was as a measure of abundant caution that these services were included at the time of entering into the Agreement, however the same has not been performed till date by the Appellant. These services so not provided include assistance in

recruitment of suitable students, collection and forwarding of fees, ensuring the accompaniment of fees with the application, and advice to students on the visa application related things.

5. That, the service recipients (i.e. Foreign Universities) are located outside India and are not an establishment of a distinct person in accordance with explanation 1 to Section 8 of the Integrated GST Act, 2017 ('IGST Act'). Further, the Appellant is treating the place of supply of the said services as outside India, in terms of Section 13(2) of the IGST Act.
6. That, the Appellant is of the view that all the conditions required to perform export of services are fulfilled in the instant case and therefore it is treating these services as 'export of services' within the meaning of Section 2(6) of the IGST Act.
7. Whereas, given the proposition of 'intermediary services' under GST and expansion of scope to obtain Advance Rulings for services being undertaken, the Appellant filed an Application for Advance Ruling on the said issue i.e. whether the Appellant is liable to pay tax on services provided by them.
8. In the Application, other than the submission on export of services, the Appellant discussed in detail and submitted as to how the nature of its services do not qualify as 'intermediary' services. The Appellant also submitted that it is acting as an independent contractor and not acting as an agent for the Foreign Universities, further it is not facilitating the provision of 'education services' which is provided by the Foreign Universities to the students.
9. That, the concerned officer had 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.
10. The Adjudicating Authority observed that the said objection was misplaced, and 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.
11. That, the Adjudicating Authority admitted the advance ruling on this question under section 97(2)(a) and (e) of CGST Act.
12. That, the **Adjudicating Authority considered the question** of whether the service provided by the Appellant is classifiable as export from the **limited angle** of probing **whether the Appellant is providing an intermediary service.**

13. That, the Appellant was represented by its authorized representative during the course of personal hearing, before the Adjudicating Authority. During the hearing, and for the purpose of reference, the Appellant submitted on records a sample Agreement dated 23rd November 2016 ('Agreement'), which it entered into with Australian Catholic University.
14. Upon hearing the Appellant, the Adjudicating Authority pronounced the Impugned Ruling and held that the services provided by the Appellant are that of intermediary.
15. Whereas, the Adjudicating Authority observed that, it is clear from the discussion that the main service provided by the Appellant is facilitating recruitment of students and the consideration is paid as commission on the basis of course fee and recruitment through the applicant and promotion of the courses is incidental to the above principal supply.
16. The Appellant's argument that the payment of consideration is based on commission basis, is merely a mechanism for determining the consideration payable, and therefore it has no bearing on the Appellant's stand as an independent service provider, was not appreciated by the Adjudicating Authority.
17. While, pronouncing the Impugned Ruling, the Adjudicating Authority also observed that:
- *"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."*
 - *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."*
18. That, being aggrieved by the Impugned Ruling, the Appellant has preferred the present Appeal, accompanied by the prescribed fee of INR _____ , **copy of Challan** is annexed to this Appeal as **Annexure A**
19. That, a copy of the **Impugned Ruling** is annexed to this Appeal as **Annexure B**
20. And, the Grounds of Appeal are set forth in **Exhibit II**.

EXHIBIT II
GROUND OF APPEAL

At the outset, the Appellant does not agree with the findings of the Adjudicating Authority in the Impugned Ruling based on the submissions made herein after, which should be considered to have been made without prejudice to one another. The Impugned Ruling passed by the Adjudicating Authority is a result of erroneous application of facts and law and hence is liable to be modified, to the extent it rules that services provided by the Appellant are not export of services.

1. IMPUGNED RULING IS BASED ON INCORRECT APPRECIATION OF FACTS AND APPLICATION OF LEGAL PROVISIONS

- 1.1. The Impugned Ruling is completely based on the false premise that the Appellant is a recruitment agent and facilitating the recruitment or enrolment of students to Foreign Universities.
- 1.2. At the cost of repetition and for the sake of brevity, the facts of the transaction for ensuring a correct appreciation, is set out as under:
 - That, the Appellant is a service provider providing 'business auxiliary services' by promoting the courses of Foreign Universities;
 - That, undisputedly, the Appellant is paid consideration by the Foreign Universities and therefore they are the service recipient in instant case;
 - That, the Foreign Universities are providing 'education services' to students across world;
 - That, the Appellant is getting paid its remuneration which is derived on a percentage based upon the students admitted to the University;
 - That, it is the student who pays consideration (in form of Tuition Fees, etc.) to the Universities for the services provided by way of education;
 - That, it is explicitly mentioned in the Agreement that heading in the agreement are for ease of reference only, and do not affect the meaning of this agreement;

- It is also clearly provided in the Agreement, that the Appellant is engaged as an independent contractor by the University.

1.3. The scope of services covered under **clause 3** and **4** of the Agreement, is reproduced as follows:

- a) *“Promote the Courses of the University;*
- b) *Find suitable Prospective Students to undertake Courses;*
- c) ***In accordance with University procedures and requirements, recruit and assist in the recruitment of suitable students;***
- d) *Assist people to become students and for that purpose provide all necessary information about Courses and assistance in completing forms or applications and submitting these to the University;*
- e) *Comply with the requirements of the ESOS Act and obligations under the National Code;*
- f) *Meet any enrolment or other performance targets as mutually agreed between ACU and the Education Agent; and*
- g) *Perform other services and provide reports or information requested by the University or required by this Agreement.”*

1.4. The Appellant submitted on records, in its application, that clause (c) (*cited supra*) and other services as mentioned in the table in the application are not performed by the Appellant and students are directly recruited by the Foreign Universities.

1.5. **The very fact, that the Appellant is not providing the services covered under clause (c) was placed on records, before the Adjudicating Authority however the same has been completely disregarded in the Impugned Ruling.**

1.6. In contrary, the Impugned Ruling is misplaced on the fact that the Appellant is acting as a ‘recruitment agent’ and facilitating the recruitment or enrolment of students to Foreign Universities.

1.7. The Appellant would like to place it on record, as also submitted in its Application that the following services, are **not provided** by them.

- Collect and forward within ten days of receipt, all fees and charges to the University by prospective students and ensure that all fees and charges are made payable to the University;
- Ensure that fees and charges are accompanied by relevant application and acceptance of offer documents;

- Advise the students that the fees shall be refunded to the students in case the VISA application of the student is refused; and
- Make available any offer document received from the University to the prospective students

1.8. The Appellant hereby submits that, it is clear from the material placed on records, that the services provided by the Appellant are in the nature of marketing and promotion of courses offered by the Foreign Universities.

1.9. It is also submitted that the concept of 'intermediary' services was introduced in July 2012, as amended in October 2014, and carried forward in GST Legislation.

1.10. The definition of intermediary, as provided under Section 2(13) of the Integrated GST Act, read as under:

- *“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”*

1.11. The Appellant submits that considering the legislative history of “intermediary”, the following can be undisputedly comprehended:

- That, **intermediary is a species of Agent and not all agents are intermediary for the purpose of GST;**
- That, it is **only the persons (by whatever name called) providing services for arranging or facilitating the supply of goods or services between two or more persons**, who are covered under the scope of intermediary;
- The phrase **“supply of services”** is ought to be read as **“services supplied by the principal”**.
- That, to facilitate or arrange a supply of services between two persons, there has to be a supply of services by the person for whom the intermediary is working (i.e. principal) and it is the same services the supply of which the intermediary will facilitate or arrange, between the principal and service receiver.
- Further, as unambiguously provided in the definition of intermediary, the scope of intermediary excludes the person who supplies such goods or services or both or securities on his own account. This

exclusion has same meaning, as the services are provided by the Agent but on behalf of the principal. In this situation, the recipient of services would be the person receiving those own account services and not principal.

1.12. It is further submitted that, the *sine qua non* of an intermediary function is as follows:

- a) The service provider should “**facilitate**” or “**arrange**”
- b) The **supply** of goods or services;
- c) **Between two** or more **persons**;

Further as submitted above, the “supply of services” is ought to be read as the supply of services provided by the principal. It is reiterated that in the instant case the Foreign Universities provides “education services”. Applying the above essentials, in the present case, the Appellant submits that it is not facilitating or arranging education service. Rather, the Appellant is providing services on its own account, in the nature of marketing and promotion of course of Foreign Universities in India.

1.13. The Appellant also places its strong reliance on the Ruling by Authority of Advance Ruling (‘AAR’) in the Application filed by **GODADDY INDIA WEB SERVICES PVT. LTD.**¹ wherein the Authority denied the revenue’s submission on classifying the Applicant’s services as “intermediary” and held that the services provided by GoDaddy India (‘applicant’) to GoDaddy US are used and consumed outside India.

1.14. Whereas, the Revenue in the case of GoDaddy submitted that, various services i.e., marketing, event management services and collection of money from customer on behalf of GoDaddy US, proposed to be provided by the applicant to GoDaddy US are not a bundle of services; that there is involvement of the applicant with GoDaddy US as well as customers in India; that the services so provided appear to be covered under "Intermediary Services", which falls under extant Rule 9 of Place of Provisions of Service Tax Rules, 2012.

1.15. The Authority for Advance Ruling, in the case of GoDaddy observed that the definition of "intermediary" as envisaged under Rule 2 (f) of Place of Provision of Services Rules, does not include a person who provides the main service on his own account. In the present case, applicant is providing main service i.e. "business

¹ 2016-TIOL-08-ARA-ST

support services" to WWD US and on his own account. Therefore, applicant is not an "intermediary" and the service provided by him is not intermediary service.

1.16. The Appellant submits that the facts of its case are similar to that of GoDaddy and the scope of services provided by the Appellant, inter-alia, includes marketing and promotion services. Therefore, applying the ratio of GoDaddy (*cited supra*), the Appellant's services should also be ruled as export of services and not that of intermediary, as against ruled by the Adjudicating Authority in the instant Impugned Ruling.

1.17. The Appellant submits, that a similar view was taken in the Advance Ruling of **M/s UNIVERSAL SERVICES INDIA PVT. LTD.**², wherein also the Authority ruled that the definition of "intermediary" as envisaged under Rule 2 (f) of Place of Provision of Services does not include a person who provides the main service on his own account. In the present case, applicant is providing main service i.e. "business support services" to WWD US and on his own account. Therefore, applicant is not an "intermediary" and the service provided by him is not intermediary service.

1.18. Relying on the definition of intermediary, read with the Advance Rulings (*cited supra*) in lights of the facts and circumstances of the present case, where the Appellant is providing business auxiliary services, the Appellant submits that its services falls under the exclusion clause in the definition of "intermediary" and thus cannot be treated as intermediary by any way of stretched imagination.

1.19. The Appellant submits, that in view of the correct appreciation of facts and application of law, this Appellate Authority may be pleased to rule Appellant's services as exports, by applying Section 13(2) of the IGST Act, and also Rule that the services are not that of intermediary.

² 2016-TIOL-09-ARA-ST

2. THE FINDINGS THAT APPELLANT IS A ‘RECRUITMENT AGENT’ IS TOTALLY MISCONCEIVED

- 2.1. The findings of the Adjudicating Authority in the Impugned Ruling is totally misconceived and falls short of the truth.
- 2.2. The Adjudicating Authority in its Impugned Ruling, at page 12, observed the following:
- “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.**”*
- 2.3. It is based on the above finding, that the Appellant is a recruitment agent, the Adjudicating Authority has concluded that the services are that of ‘intermediary’ and therefore not exports.
- 2.4. Without prejudice to the any of the grounds in Appeal or facts mentioned in the Application, the Appellant hereby submits, that assuming and without admitting the Appellant is a recruitment Agent, it is still not facilitating or arranging the supply of services (i.e. education services) between two persons (i.e. Foreign University and students). The findings of the Adjudicating Authority would have been still acceptable, if the University was providing ‘recruitment services’, which is not the case.
- 2.5. It is reiterated that the Foreign University is providing education services to students, and by no stretch of imagination, the Foreign University is providing recruitment services. Therefore, the Appellant cannot act as a recruitment agent.
- 2.6. The Appellant submits, that it has used the term “education agent” in the Agreement, only to ensure compliance to the respective overseas education laws. The Appellant further submits that it is required to comply with the **Education Services for Overseas Students Act 2000**, as applicable in Australia.
- 2.7. Whereas, as expressly mentioned and agreed between the parties to the Agreement (i.e. Appellant and Foreign Universities) that there is no relationship between the Foreign Universities is that of Principal and Agent. It is further submitted that the Appellant is engaged as an “Independent Contractor” by the Foreign Universities. The reference is invited to clause 2.3 of the Agreement, read as under:

*“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 and the University:*

*(a) is not one of employer and employee; and
(b) is **not one of principal and agent**”*

- 2.8. The Adjudicating Authority has also strongly emphasized in the Impugned Ruling, that the Appellant is getting paid consideration in form of the Commission. It is based on this, and other observations, that the Adjudicating Authority has ruled that the services provided by the Appellant are that of the Recruitment Agent.
- 2.9. Be that as it may, the Appellant submits that even if the consideration is paid in the form of commission, the services provided by the Appellant cannot be construed as ‘intermediary’. To corroborate its contention, the Appellant wishes to place reliance on a decision of the Honorable Tribunal, wherein it held that the **measure of taxation will not determine the nature of taxation**.
- 2.10. In the matter of **M/s SI GROUP INDIA LTD V. COMMISSIONER OF CENTRAL EXCISE, RAIGAD**³ the Honorable Tribunal held that the fact that royalty paid for providing technical services is determined on basis of net sales does not mean that engineering consultancy services was not provided.
- 2.11. The appellants in SII case (*cited supra*) were to pay a lump sum amount for transfer of technical knowhow and royalty at the rate of % of net sales for receiving technical services from SII. The lower authority confirmed the demand on royalty on the development expenses incurred in India for converting the know how into manufacturing facility. The demand on account of royalty paid by the appellants was confirmed treating the same as a service under the category of Consulting Engineer Service.
- 2.12. The Counsel in the matter contended that what is paid to the principal is royalty which was not leviable to service tax at the relevant time and in any case the royalty is paid as a percentage of net sales and, therefore, cannot be termed as a service.
- 2.13. The Tribunal noted from the records, that "*in consideration of SII providing technical services to the Indian Company, the Indian company shall pay to SII royalty at the rate of 4% on the Net Sales subject to*" and did not agree with the argument of the Ld. Sr. Advocate that the service provided is Intellectual Property Service and service of Engineer Consultancy is not provided, notwithstanding the fact that the royalty is paid for such services which is determined on basis of net Sales. The Tribunal further observed that, **it is well**

³ 2014-TIOL-2578-CESTAT-MUM

established in law that “measure of taxation” does not determine the “nature of taxation”.

- 2.14. In view of the above submission, the Appellant strongly contests the findings of the Adjudicating Authority that the Appellant is a recruitment agent, as (i) it is facilitating the recruitment of students for Foreign Universities, and (ii) getting paid its consideration in form of commission.
- 2.15. The Ld. Adjudicating Authority has observed in its Ruling that the promotion of services are ancillary to the principal supply of facilitating the Foreign Universities. In response thereto, the Appellant submits, that as it is not acting as a recruitment agent, for the reasons discussed above, thus the main services (promotion services) provided by the Appellant becomes principal supply.
- 2.16. The Appellant submits that, once the finding of the Adjudicating Authority that Appellant is a recruitment agent is set aside, resultantly the remaining i.e. promotion services becomes the principal services in the instant case.
- 2.17. The Appellant would like to place it on record, that assuming without admitting, even when it was acting as representative of University, it still did not facilitate or arrange supply of education services. The services provided by the Appellant are his own account services, which falls within the exclusion clause of the definition of ‘intermediary’.
- 2.18. The Appellant also submits, that there is no dispute in the Impugned Ruling that the promotion services will not qualify as export of services.
- 2.19. The Appellant would like to refer the clauses of the Agreement, wherefrom one could easily decipher and agree that the services provided by the Appellant are that of marketing and promotion of courses of Foreign Universities in India. The relevant, extract from the clause 3 (i.e. responsibility of the Appellant) is reproduced as under:
- *“promote the Courses of the University;*
 - *find suitable Prospective Students to undertake Courses;*
 - *assist people to become students and for that purpose provide all necessary information about Courses and assistance in completing forms or applications and submitting these to the University;”*
- 2.20. In view of the foregoing submissions, the Appellant submits that it is evidently coming out from the Agreement and material placed on records, that the services provided by the Appellant are for promotion of course of Foreign Universities in India.

3. THE SERVICES PROVIDED BY THE APPELLANT ARE NOT INTERMEDIARY SERVICES, ISSUE RES JUDICATA NOW

- 3.1. The Appellant submits that, after filling of its application and before the pronouncement of the Impugned Ruling, there has been a significant development in form of a judicial decision on the treatment of such services. The Appellant now has a judicial decision on identical facts, where in the Tribunal in another case, held similar services as exports of services under service tax laws. The Tribunal in its decision specifically held that the services are not that of intermediary.
- 3.2. Before discussing the ratio and applicability of the said decision from the Tribunal, the Appellant would like to put it on records that the concept and definition of “intermediary” and “export of services” under extant service tax laws and GST is same, and therefore the legislation remains same for the purpose determining the taxability, the relevant provisions are as under:

	Intermediary under Service Tax	Intermediary under GST
Definition	Rule 2(f) of the Place of Provision of Services Rules, 2012 “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the <u>'main' service</u>) or a supply of goods, between two or more persons, but does not include a person who provides the <u>main service</u> or supplies the goods on his account”	Section 2(13) of GST Act “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 <u>such</u> goods or <u>services</u> or both or securities on his own account”
Treatment	The supply of intermediary services by a person in taxable territory were treated taxable, by applying Rule 9(c) of the Place of Provision of Services Rules, 2012	The supply of intermediary services by a person in taxable territory are treated taxable, by applying Section 13(2) of the Integrated GST Act, 2017

	Exports under Service Tax	Exports under GST
Meaning	<p>Per Rule 6A(1) of Service Tax Rules, 1994, the provision of any service provided or agreed to be provided shall be treated as export of service when,-</p> <p>(a) the provider of service is located in the taxable territory,</p> <p>(b) the recipient of service is located outside India,</p> <p>(c) the service is not a service specified in the section 66D of the Act,</p> <p>(d) the place of provision of the service is outside India,</p> <p>(e) the payment for such service has been received by the provider of service in convertible Foreign exchange, and</p> <p>(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act</p>	<p>Per Section 2(6) of the Integrated GST Act, “export of services” means the supply of any service when:-</p> <p>(i) the supplier of service is located in India;</p> <p>(ii) the recipient of service is located outside India;</p> <p>(iii) the place of supply of service is outside India;</p> <p>(iv) the payment for such service has been received by the supplier of service in convertible Foreign exchange; and</p> <p>(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</p>

As can be seen from the above table, that the provisions are identical under both the statutes (i.e. service tax and GST), and considering the identical set of facts in the instant case, the Appellant wishes to place its strong reliance on the decision of the Tribunal, to contest that that services provided by the Appellant are not that of intermediary, as it has not facilitated or arranged a service between two or more persons.

The Appellant also submits that the term “main service” is missing in the definition of intermediary under GST, and therefore one is ought to read the term “supply of services” as supply of main services in GST as well. The use of term “such” in the

definition of intermediary under GST, means and refers to the supply of services provided by the principal, and in the instant case said 'such' services are education services provided by the Foreign University, in which is not facilitated or arranged by the Appellant.

The Appellant now proceeds to discuss the application of the judicial decision, in light of the facts and circumstance of the present case.

- 3.3. On **16.03.2018**, the **Honorable Tribunal** while deciding a matter of **SUNRISE IMMIGRATION CONSULTANTS PRIVATE LIMITED V. CCE & CST** on identical facts, held that the services provided by appellant therein are export of services. (copy of Order attached as **Annexure C**)
- 3.4. The Appellant (Sunrise) had filed an Appeal in year 2015, against the Order of Commissioner (Appeals) and the matter came up for hearing on 16.03.2018 at the Tribunal. There was a service tax demand of INR 89 lakh, along with interest and penalty. The Appellant in that case provided (a) Visa Facilitation Services and (b) Referral services.
- 3.5. In that case also, the Appellant was getting paid by the college and Universities, on commission basis, on successful admission of the student. And, the Appellant had paid service tax on visa-processing services and contested the demand only for referral services. A show-cause-notice was issued to Sunrise, as to whether services provided by sunrise during 2009-10 to 2013-2014 would qualify as export of services under extant laws. The Adjudicating Authority dropped the demand for the period 2009 to June 2012, however confirmed the tax demand for July 2012 to March 2014 (negative list regime under service tax laws).
- 3.6. The Counsel in the matter of Sunrise submitted that it is providing promotion and marketing of services provided by its clients (i.e. banks and Universities). The Counsel also put forth that the services are classifiable under "Business Auxiliary Services".
- 3.7. Hitherto, the Appellant wishes to emphasize that the nature of services provided in the name of "referral services" by Sunrise, is identical to what Appellant provides for marketing of courses of Foreign Universities in India. It is also submitted that there was no dispute about the classification of services provided by Sunrise, and the Tribunal accepted that the services are "business auxiliary services". The Appellant vehemently put for that the services provided by them are also "business auxiliary services", and in the backdrop of facts and circumstance of the instant case, the Appellant case is similar to what has been decided by the Honorable Tribunal.

3.8. The Appellant submits, that in the Sunrise matter it was also argued before the Bench, that Sunrise is not providing intermediary services. Furthermore, two of the Advance Rulings (GoDaddy and Universal – *cited supra*), on the intermediary issue, where Authority decided in favor the Applicants and denied the presence of intermediary services were also relied upon the Counsel of Sunrise.

3.9. In the matter of Sunrise, the Tribunal held that the services provided by them are not intermediary services as **they are not providing services between two or more persons.**

3.10. At the same time, the Tribunal also observed that Sunrise is only facilitating the aspirant student and introduced them to college. The bench further observed that Sunrise did not facilitate the main services i.e. education rendered by Universities and loan provided by banks. The relevant extract from para 10 of the Tribunal's Final Order, read as follows:

- *“We find that the appellant is **nowhere providing services between two or more persons***
- *‘In fact, the appellant is **providing services to their clients namely banks/colleges/University** who are paying commission/fee to the appellant.*
- *The appellant is **only facilitating the aspirant student** and introduced them to the college and if these students gets admission to the college, the appellant gets certain commission which is in nature of promoting the business of the college and for referring investors borrow loan from Foreign based bank to the people who wishes settled in Canada on that if the deal matures, the appellant is getting certain commission”*
- *So the nature of service provided by the appellant is the promotion of business of their client, in terms, he gets commission which is covered under **Business Auxiliary Service which is not the main service provided by the main service providers namely banks/University.***
- *As the **appellant did not arrange or facilitate main service i.e. education or loan rendered by colleges/banks.***

3.11. The Appellant wishes to place on records that while deciding the matter, the Tribunal followed the views taken in the Advance Ruling in the matter of GoDaddy and Universal (*cited supra*). The matter was decided in favor the Sunrise and the Tribunal concluded that the services provided by the Appellant are not ‘intermediary’ services but business auxiliary services and therefore qualify as export of services under the extant laws.

In view of the submissions, made herein above, which should be considered in alternate and without prejudice to one another, the Appellant presents its case before this Appellate

Authority and pleads that the Impugned Ruling being fallacious is liable to be modified to the extent it rules that the services provided by the Appellant are that of intermediary.

PRAYER

In view of the foregoing, it is respectfully prayed that the Ld. Appellate Authority, may be pleased to:

- a) to modify the impugned advance ruling passed by the Authority for Advance Ruling, to the extent it rules that services provided by Appellant are intermediary, as prayed above;
- b) grant a personal hearing; and
- c) pass any such further or other order (s) as may be deemed fit and proper in facts and circumstances of the case.

And for this act of kindness, the appellant, as is duty bound, shall ever pray.

VERIFICATION

I, **Sanatanu Bag**, son of Mr. Swapan Kumar Bag do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents is correct. I am making this application in my capacity as Group Finance & Accounts Supervisor and that I am competent to make this application and verify it.

Sanatanu Bag.

Place: _____

Santanu Bag

Date: _____

(Group Finance & Accounts Supervisor)