

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SMT. RANJANA JHA, MEMBER

SMT. SHIKHA C, MEMBER

ORDER NO.KAR/AAAR/09/2021-22

DATE:09.11.2021

| | | |
|--------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Sl. No | Name and address of the appellant | M/s Airbus Group India Pvt Ltd, 4 & 4A, XYLEM, 4 th Floor, Dyavasandra Industrial Area, Mahadevapura Post, Bengaluru 560048 |
| 1 | GSTIN or User ID | 29AAGCA1513R1ZD |
| 2 | Advance Ruling Order against which appeal is filed | KAR/ADRG 31/2021 Dated: 1 st July 2021 |
| 3 | Date of filing appeal | 11-08-2021 |
| 4 | Represented by | Shri. G. Shivadass, Sr Advocate & Authorised representative |
| 5 | Jurisdictional Authority- Centre | The Principal Commissioner of Central Tax, Bangalore East Commissionerate. |
| 6 | Jurisdictional Authority- State | LGSTO 35A, Bangalore |
| 7 | Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details | Yes. Rs 20,000 /- (CGST & SGST) transferred from Major Head IGST to Minor Head Fee vide Form PMT-09 with ARN AA290821024141M dated 09-08-2021. |

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST Act 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly



made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Airbus Group India Pvt Ltd, 4th Floor, Xylem, Plot No 4 & 4A, Dyavasandra Industrial Area, Mahadevapura Post, Whitefield Road, Bengaluru 560048 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 31/2021 dated 1st July 2021.

Brief Facts of the case:

3. The Appellant is a Private Limited Company and operating as a subsidiary of Airbus Invest SAS, France. The Airbus Group (of which the Appellant is a part) generally procures parts, components or services from both domestic and international markets which are required for manufacturing and assembly of aerospace products like aircrafts, helicopters, etc. The Airbus Group has a specialized global sourcing team which is responsible for sourcing of relevant products from various international market. Airbus France has entered into an “Intra-Group Services Agreement” with effect from 1st April 2020 with the Appellant in terms of which the Appellant is required to perform two functions; i.e (i) Procurement Operations – rendering of various technical advisory and business support services in relation to supplier development activities; and (ii) Procurement Transformation & Central Services – procurement ethics & compliance, procurement process and key projects management, strategy, business intelligence and digital procurement, flying part procurement and general procurement. For the above said services, the Appellant would be remunerated with a service fee computed on a ‘cost plus mark-up’ basis. The Agreement specifically restricts the Appellant to decide or select any supplier and agree upon the terms and conditions of the supply and the said decisions are the prerogative of Airbus France. The Appellant is also not responsible for issuance of purchase order or payment for the supply made by the vendor.

4. In order to obtain a ruling on the classification of the service provided by them, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

(a) *Whether the activities carried out by the Appellant in India would constitute a supply of “Other Support Services” falling under Heading 9985*



or as "Intermediary Service" classifiable under Heading 9961/9962 or any other classification of services as specified under GST laws?

(b) Whether the services rendered by the Appellant would not be liable to GST, owing to the reason that such services may qualify as "export of services" in terms of clause 6 of Section 2 of the IGST Act, 2017 and consequently, be construed as a 'zero-rated supply' in terms of Section 16 of the IGST Act?"

5. The AAR vide its order KAR ADRG No 31/2021 dated 1st July 2021 held as under:

"The activities carried out in India by the Applicant would constitute a supply as "Intermediary services" classifiable under SAC 998599.

The services rendered by the Applicant do not qualify as 'export of services' in terms of sub-section 2 of Section 6 of the IGST 2017 and consequently, are exigible to GST at the rate of 18% in terms of clause (iii) of entry no. 23 of Notification No. 11/2017-Central Tax (R) dated 28.06.2017."

6. Aggrieved by the ruling given by the AAR, the Appellant has filed this appeal on the following grounds.

6.1. The Appellant submitted that the true nature of the activities undertaken by the Appellant are very different than what has been observed by the AAR in Paras 15 and 16 of the impugned order; that in the instant case, there is a 5-step process for selection of suppliers out of which only the most basic steps like identification, information gathering , etc are carried out by the Appellant while the actual steps which lead to the supply taking place (i.e awarding of contract, ordering, delivery and payment) are all handled, administered and decided directly by Airbus France; that the Appellant's major function is to review potential suppliers as well as supplier's operations/quality standards and report the observations to Airbus France and provide relevant expertise from time to time which is an independent service by the Appellant to Airbus France. They submitted that at no point of time is the Appellant directly involved in any activity which could result in an exposure to 'intermediary services' of facilitating supply of goods between the vendor and Airbus France; that for the most part, the supplier is not even identified; there are no three parties involved in the transaction and the services are provided



to Airbus France only. They submitted that the Appellant is expressly prohibited from carrying out certain functions such as deciding the supplier from whom the merchandise will be sourced, communication to supplier about his selection, making decisions regarding continuing the relationship and procurement with supplier who has been identified or reported for any unethical behaviour/activity in the supply chain, negotiating with the supplier, signing the contract/issuing the purchase order, sharing the production schedule with the supplier and payment to the supplier. The basic services provided by the Appellant do not, at any point of time, make the bidding process easy or more convenient for Airbus France since the said activities are only in the nature of identification, information gathering, etc with there being no guarantee that any vendors identified by the Appellant would be certainly be awarded a final contract; that the scope of work carried out by the Appellant included providing technical expertise, advisory support and operational assistance concerning important areas of procurement in order to meet the Airbus Group agreed procurement quality standards, processes and strategy and does not involve the Appellant in any transaction relating to supply of goods.

6.2. They submitted that a perusal of the definition of the term “intermediary” makes it clear that the extent of the role of an “intermediary” requires an additional effort initiated for the purpose of arranging or facilitating the main supply between two parties; that the very purpose of arranging or facilitation is to make an already established supply of goods or services easier and more convenient to carry out. This in itself indicates that the intermediary should put in an added effort to ‘arrange’ or ‘facilitate’ the same; that the arrangement or facilitation as contemplated in the definition implies interaction by the supplier with the third party (i.e the ultimate supplier or recipient of the main supply) and therefore it should be basically a “three-party or tripartite transaction.’ They relied on the Education Guide issued by the CBIC during the service tax regime and submitted that none of the conditions required for qualifying to be ‘intermediary services’ as explained in the Education Guide are satisfied in their case. Further, they contend that there is no dispute that they are not an ‘agent’ or ‘broker’; that the ruling has in principle agreed that the Appellant is providing the service on a principal-to-principal basis but has also observed that reliance on principal-to-principal relationship is not relevant for the purpose of determining an intermediary; that such an observation is directly against Section 2(13) of the IGST Act which excludes any transaction provided on his own account i.e principal-to-principal transaction. They also submitted that they are not covered under the phrase “any other person” contemplated in the definition; that the same has not been disputed



by the lower Authority. They relied on the rulings given by the AAR New Delhi in the case of M/s GoDaddy India Web Services Pvt Ltd and M/s Universal Service India Pvt Ltd to contend that their service will not qualify as intermediary service. In addition, they also relied on the following judicial decisions to substantiate their claim that the impugned ruling is not legally sustainable:

M/s Evalueserve.com Pvt Ltd vs CST, Gurgaon – 2018 (3) TMI 1430 CESTAT Chandigarh

M/s Verizon India Pvt Ltd vs CST – 2019 TIOL 2268 CESTAT DEL

M/s Lubrizol Advanced Materials India Pvt Ltd vs CCE, Belapur – 2019 (1) TMI 720 (Tri-Mum)

M/s Microsoft Corporation (I) Pvt Ltd vs CST, New Delhi – 2014 (10) TMI 200 (Tri-New Delhi LB)

M/s AMD India Pvt Ltd vs CST, Bangalore – 2017 (12) TMI 772 (Tri-Bang)

M/s CSG Systems International India Pvt Ltd vs Commissioner of Central Tax, Bangalore – 2021 TIOL 422 CESTAT BANG

6.3. The Appellant submitted that their activities do not amount to ‘arrangement’ or ‘facilitation’ of main supply; that from the dictionary meanings of the above said words, it emerges that an act of ‘arrangement’ or ‘facilitation’ is utilized to make things more organized, effective, easier and more convenient to be done; that the expression ‘arranges or facilitates the supply of goods or services or both, or securities’ as used in Section 2(13) of the IGST Act, 2017 refers to the organization of provision of actual support or assistance in any manner which would ensure that the supply of goods or services or both or securities between two or more persons becomes easier or more convenient; that in the instant case, the Appellant’s sole purpose is to provide support services which is limited to providing necessary information, review and advising from quality perspective and all the decisions relating to the same are the responsibility of Airbus France; that the Appellant is not privy to or a participant in any other business arrangement which Airbus France has entered into with any clients or customers; that the services provided by it to Airbus France are completely independent of any arrangements which the Airbus France may enter into on its own volition; that the Appellant does not have any role or authority with respect to the following:



- Acceptance of a supplier
- Agreement upon a price
- Deciding on the terms of the contract
- Activities relating to issuance of purchase order/placing order; and
- Acceptance of the invoice of supplier and making the payment etc.

They submitted that in the absence of identifiable customer/client, it cannot be considered that the Appellant's services are in the nature of arranging or facilitating any supply between Airbus France and its suppliers/customers/clients. Having concluded that the Appellant is not a part of any of the above-mentioned activities which involves facilitation services, they submitted that it can be proved that the services agreed to be rendered by them do not fall within the definition of intermediary services; that the lower Authority has also not disputed that the role of the Appellant does not include any of the above activities. They contended that the services are provided by the Appellant to Airbus France and not 'for and on behalf of' Airbus France and no other third party is involved with regard to the transaction between the Appellant and Airbus France; that the services are provided to Airbus France entirely on their own account and hence the ruling the Appellant acts as intermediary is not sustainable.

6.4. On the point of remuneration, they submitted that the same is received on a cost plus mark-up basis and when such is the case, their service cannot be considered as 'intermediary service'. They relied on the following judicial decisions in this regard wherein it has been held that the assesses do not qualify to be an 'intermediary' in a situation wherein the consideration was received on cost plus mark-up basis:

M/s Lubrizol Advanced Materials India Pvt Ltd vs CCE, Belapur – 2019 (1) TMI 720 (Tri-Mum)

M/s Beaumanoir India Pvt Ltd vs CCE, Gurgaon-I – 2019 (6) TMI 630 (Tri-Chandigarh)

M/s Verizon India Pvt Ltd vs CST – 2019 TIOL 2268 CESTAT DEL

6.5. The Appellant further submitted that Paragraph 3.2.2 of the Services Agreement clearly mandates that the Appellant has to implement all necessary means to ensure a good quality of services provided to Airbus France in addition to ensuring that the relevant personnel and third party providers are properly qualified and capable; that consequently it emerges that the

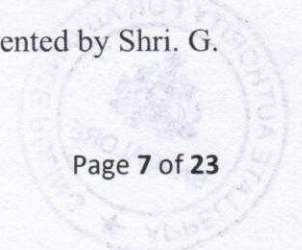


Appellant cannot be called as an 'intermediary' since an intermediary would not have gotten involved in quality control and ensuring the highest standard of services being provided. They submitted that the lower Authority ought to have appreciated the legal principals enunciated in the several judicial decisions relied upon them instead of summarily rejecting the same on account of mere minor factual discrepancies; that the lower Authority has also not given plausible reasons for arriving at the conclusions in the impugned ruling nor have they taken the facts and circumstances of the present case into consideration thereby rendering the impugned order as a non-speaking order not sustainable in law. They submitted that the lower Authority has erred in rejecting the classification of the services provided by them under SAC 9983; that the said classification holds merit owing to the reason that the activities rendered by the Appellant essentially comprise of providing technical expertise, advisory support and operational assistance mainly concerning important areas of procurement such as products standards, advanced quality planning with respect to raw materials, capex requirements, processes to be carried out, information on supplier landscape, their operations capabilities, market conditions, etc., in order to meet the Airbus group agreed procurement quality standards, processes and strategy; that the GST Explanatory Notes for services clearly specify that market research services like market analysis, use of research monographs, statistics, econometric models and surveys, etc are covered under Tariff sub-heading 9983 71; that consequently the question of classification of the services of the Appellant under any Tariff Heading other than 9983 does not arise.

6.6. The Appellant submitted that since they do not qualify to be an intermediary, the place of supply of their service would be the location of the recipient which is outside India and hence the services provided by them fulfil all conditions of 'export of services' as per Section 2(6) of the IGST Act and qualify to be zero-rated supplies and they are eligible to claim refund of unutilized ITC. In view of the above submissions, they prayed that the order of the lower Authority be set aside/modified.

PERSONAL HEARING

7. The appellant was granted a virtual hearing on 27th October 2021. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. G. Shivadas, Senior Advocate and authorised representative.



7.1. The Advocate explained in detail the activities of the Appellant which are being undertaken in terms of the Service Agreement entered into with Airbus SAS France. He explained that the role of the Appellant is limited to two functions namely: (a) PY function wherein the Appellant identifies potential suppliers in India and provides the information to Airbus France regarding the potential supplier's operations and quality standards; and (b) PO function wherein the existing suppliers to Airbus France are assessed and monitored on their business performance, delivery and product quality performance and a report is shared with Airbus France. For this activity, the Appellant is remunerated by Airbus France with a service fee which is equal to the cost incurred in performance of the service plus a mark up of an agreed percentage. The Advocate emphasised that as per the agreement, the Appellant is not authorised to participate in the bidding process, negotiate the pricing and contract terms with the identified suppliers, co-ordinate the shipment of goods between the parties, co-ordinate for payments between the parties and resolve the complaints and post-sales activities of the supplier. These activities and decisions are undertaken by Airbus France.

7.2. In the backdrop of this agreement, the Advocate urged that the Appellant is not an intermediary as they are not arranging or facilitating any supply by Airbus France to the vendors in India. He submitted that the supply of goods is by the Indian vendors to Airbus France and the Appellant has not entered into any contract with the Indian vendors to facilitate the supply of goods to Airbus France. He drew attention to the definition of 'intermediary' as given in the erstwhile Service Tax law and also the explanation of intermediary service as given in the Education Guide, 2012. He submitted that the definition of 'intermediary' under the GST law is the same as the Service Tax law and hence the guidance given in the Education Guide is of value. While arguing that the Appellant is neither an 'agent' or 'broker' or any other person' he referred to the definition of 'agent' as given in the GST law and argued that the Appellant is not undertaking the supply of services on behalf of another. He also drew attention to the Circular dated 4-9-2018 issued in the GST regime wherein the scope of principal-agent relationship was clarified and submitted that the activities of the Appellant are not undertaken on behalf of Airbus France. He stressed on the fact that there is no supply of goods by Airbus France to any person in India, rather the supply of goods is by the Indian supplier to Airbus France and the Appellant is not an intermediary for the Indian supplier as no contract has been entered into with the Indian supplier.



7.3. The Advocate also analysed the Appellant's activities in the light of the recent Circular dated 20-09-2021 issued by the Board pursuant to the recommendations of the 45th GST Council meeting. As per the said Circular, one essential requirement for an intermediary is that there should be two supplies i.e, a main supply and an ancillary supply; that in this case, there is only one supply which is the supply of service by the Appellant to Airbus France; that there is no supply of goods by Airbus France to any person in India. He also analysed the illustrations 1 and 3 given in the said Circular and submitted that applying the same to the case of the Appellant proves that they cannot be considered as 'intermediary'.

7.4. The Advocate relied on the Advance Ruling given in the Service Tax regime in the case of GoDaddy India Web Services in support of their case. He also drew attention to the Karnataka Appellate Authority for Advance Ruling orders given in the case of Rajendra Santosh and Infinera India Pvt Ltd to establish that the Appellants' activities are different and hence cannot be considered as 'intermediary'.

7.5. The Advocate submitted that the activities undertaken by the Appellant are essentially support services which are exported and prayed that the appeal be allowed. He also undertook to submit a written summary of the submissions made during the personal hearing.

DISCUSSIONS AND FINDINGS

8. We have gone through the entire case records and considered the submissions made by the Appellant in their grounds of appeal, the additional submissions as well as the submissions made at the time of personal hearing. We have also gone through the impugned Advance Ruling wherein it was held that the services rendered by the Appellant in terms of the 'Intra-Group Services Level Agreement' would be classified as those of an 'Intermediary' and accordingly it was held by the lower Authority that the services rendered by the Appellant would not be considered as export of services, as the place of supply will not be outside India in terms of Section 13(8)(b) of the IGST Act, 2017, thereby, not complying with all the conditions prescribed for the export of services as envisaged under Section 2(6) of the IGST Act, 2017.

9. The Appellant has approached us in appeal for determination of issue as to whether the nature of services rendered by the appellant to Airbus SAS France would be construed as those



of an intermediary as defined under Section 2(13) of the CGST Act, 2017, or otherwise. We have gone through the Inter-Group Services Level Agreement entered between the Appellant and Airbus SAS France. As per the said Agreement the activities of the Appellant are summarized as follows:

- Market research and analysis
- Identifying and preparing list of potential suppliers
- Initial rescreening of potential suppliers to check the ability to deliver the goods
- Review of supplier performance including quality standards
- Providing technical advisory to the suppliers in relation to meeting quality standards
- Providing continuous update of the supplier operations to recipient

The Agreement also expressly prohibits the Appellant from performing the following activities:

- Deciding the supplier from whom the goods will be sourced
- Communication to supplier about his selection
- Reviewing the quote obtained and terms of contract from the suppliers and discussion with supplier
- Negotiating with the supplier, agreeing on the terms and conditions
- Signing a contract/issuing purchase order and placing request for supply
- Sharing production schedule with the supplier and payment to the supplier
- Making decisions regarding continuing the relationship and procurement with supplier who has been identified or reported for any unethical or non-compliant behavior/activity in the supply chain.

10. In order to determine whether the activities undertaken by the Appellant in terms of the above Agreement qualify as an 'intermediary service', it is necessary to understand the meaning of "intermediary" as defined under Section 2(13) of the IGST Act, 2017, which is as follows:

"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;"



Thus, in order to qualify as an 'intermediary', the service provider should satisfy the following aspects which make up the definition of "intermediary":

- (a) The person should be a broker, an agent or any other person, by whatever name called;
- (b) Such person should arrange or facilitate the supply of goods or services or both, or securities between two or more persons;
- (c) Such person should be supplying such goods or services or both or securities on his own account.

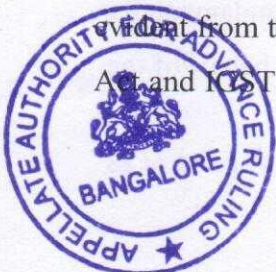
11. Taking the first limb of the definition, an intermediary means a broker, agent or any other person, by whatever name called. The term 'broker' has not been defined under GST law. The general understanding of the term 'broker' in the context of business, is one who acts as a middleman and arranges or negotiates a transaction between two persons for a commission. In this case, the Appellant is responsible for identifying potential suppliers in India and provides the information regarding the potential supplier's operational and business quality to his principal, Airbus France. The Appellant also has the responsibility for supplier development wherein the existing suppliers to Airbus France are continuously assessed and monitored on their business performance, delivery and product quality performance. The Appellant is in no way brokering a deal or a contract between the principal in France and the vendors in India. This is expressly excluded from the scope of the Appellant's activities in terms of the Intra-Group Services Level Agreement. Further, the Appellant is also not being remunerated by way of a commission for his services. As such, the Appellant cannot be termed as 'broker'.

12. The term 'agent' on the other hand has been defined in Section 2(5) of the CGST Act to mean *a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another*. This definition has been borrowed from Section 182 of the India Contracts Act, 1872 which defines an agent as a person employed to do any act for another or to represent another in dealings with third persons. Thus, from the above definition it is clear that an agent undertakes the supply of goods, or services, or both, on behalf of its principal, who must have authorized such person to undertake such supply. Also, the agent is undertaking the supply of the same goods or services or both as those of its principal. The terms 'broker' and 'agent' are therefore, fundamentally different. While an agent represents his principal and undertakes transactions on behalf of the



principal, a broker does not represent his principal but only acts as a middleman for a particular transaction. Though the term 'broker' and 'agent' are fundamentally different, yet, these terms have been put under one umbrella in the definition of intermediary. In this case, there is no dispute that the Appellant is not undertaking the services on behalf of his principal, Airbus France. This fact has been acknowledged by the lower Authority also. Hence, the Appellant will not be covered under the ageis of the term 'agent'.

13. The definition of intermediary however, does not limit its coverage to a 'broker' and 'agent' but brings within its ambit even 'any other person, by whatever name called'. The Appellant has argued that the expression 'any other person, by whatever name called' cannot be given a different meaning because it lies in the company of the words 'broker' and 'agent'. They have also argued that the principle of *ejusdem generis* would be applicable in interpreting the definition of 'intermediary' whereby the phrase 'any other person, by whatever name called' should be read in conjunction with the terms 'an agent' or a 'broker' and hence the scope of the term 'intermediary would get limited to only such persons who act similar to an agent or a broker or such class of individuals. In this regard, they have placed reliance on the decisions of the Supreme Court in the case of Siddeshwari Cotton Mills (P) Ltd – 1989 (39) ELT 498 (S.C) and the decision of the Punjab & Haryana High Court in the case of Commissioner of Income Tax, Panchkula vs Smt Rani Tara Devi & Smt Shakuntla Devi – 2013-TIOL-166-HC-P&H-IT. We have gone through the said judicial decisions and considered this argument of the Appellant. We find that the principle of '*ejusdem generis*' cannot be made applicable in interpreting the phrase 'any other person' used in the definition of intermediary. *Ejusdem generis* is a canon of statutory construction where, when general words follow the enumeration of particular cases of things, the general words will be constructed as applying to things of the same general class as those enumerated. In the case of the definition of 'intermediary' as per Section 2(13) of the IGST Act, we have already mentioned that the terms 'broker' and 'agent' are fundamentally different. It would not be proper to use the terms Broker or Agent or Intermediary, interchangeably, as these terms have completely different essence and characteristics. The words agent, and broker (used in definition of the word 'intermediary' in the IGST act) are only in the broad construct of being an intermediary or a representative but are not substitutes for each other. Further, 'agent' and 'intermediary' are entirely two different concepts in so far as the GST Law is concerned, as is evident from the fact that the "Agent" and "Intermediary" are separately defined under CGST Act and IGST Act respectively, having their own meanings assigned to them. Therefore, it is



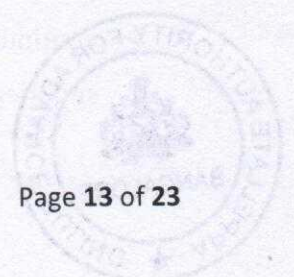
opined that although in common parlance there may seem to be a proximity and similarity in the terms Broker, Agent and Intermediary, they do not form any category or class nor do they constitute a genus under the legal provisions of the GST Acts. When such is the case, the phrase 'any other person, by whatever name called' cannot draw its colour from the preceding words which are altogether different. This is also the dictum laid down by the Supreme Court and the Punjab & Haryana High Court in the decisions relied upon by the Appellant as mentioned above. Therefore, the phrase 'any other person, by whatever name called' is to be interpreted so as to include persons who are not necessarily similar to 'broker' or 'agent'.

14. Having established that the expression 'any other person' will also include persons who are not similar to a 'broker' or 'an agent', let us examine the next limb of the definition of intermediary i.e "Such person should arrange or facilitate the supply of goods or services or both, or securities between two or more persons". This part of the definition ascribes a quality to the person who is to be construed as an intermediary. This is the crux of the definition which determines whether a person is an intermediary or not. An intermediary, thus, can be a broker or agent or any other person whose role is limited to arranging or facilitating the supply of goods or services or both between two or more persons. The act of arranging or facilitating envisages two distinct supplies: (1) A main supply of either goods or services between two principals; and (2) An ancillary supply which is the service of facilitating or arranging the main supply between the two principles. The ancillary supply is the supply of intermediary service. In other words, an intermediary is a person between the supplier and the recipient who arranges or facilitates such supply and is given a consideration for this activity. The terms 'arrange' and 'facilitate' have not been defined in the GST Acts. Merriam Webster Dictionary defines the two words as:

Facilitate: to make (something) easier; to help cause (something); to help (something) run smoothly and effectively.

Arrange: to bring about an agreement or understanding concerning; to make preparations; to move and organise (things) into a particular order or position; to organise the details of something before it happens; to plan (something).

Therefore, a general understanding of the term 'arranging' or 'facilitation' would cover a very wide range of activities.



15. In order to determine whether the Appellant is arranging or facilitating a supply between two persons, we refer to Schedule 1 of the Intra-Group Services Level Agreement which lists out in detail the services to be provided by the Appellant. The same is reproduced hereunder:

“The services to be performed by the Service Provider to Airbus Group Companies are the following:

Main activities:

Drive the strategy to develop the spend in India and to up-skill the team in the different following areas:

- *Procurement Transformation & Central Services (PY) function:*
 - *Flying Parts Procurement*
 - *General Procurement*
 - *Strategy, Business Intelligence (BI) and Digital Procurement*
 - *Procurement process and responsibility & sustainability (Ethics & Compliance)*
- *Procurement Operation (PO) function*
 - *Supplier development”*

16. The Schedule 1 of the Agreement also details the activities undertaken under each of the above categories. It is seen that as part of the PY function, which is in relation to identifying potential suppliers, the Appellant renders the following services to Airbus France:

- Identify the local capabilities in the Indian region,
- provide guidance to local vendors on expectations of the Airbus Group,
- propose relevant solutions in the region to match with the challenges and expectations,
- provide support to the teams in Europe during the Request for Information/Proposal (RFx) process,

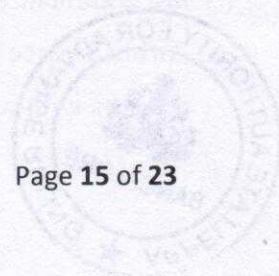
continuously work on developing strong relationship with identified strategic suppliers and understand their challenges,



- assistance in building development strategy framework, goals & roadmap for procurement related activities from India region,
- assistance in value chain analysis and maintaining updated information database for PY and PO functions,
- provide information related to business and market intelligence about procuring from the Indian region,
- provide guidance on implementation of Airbus standard processes & tools to be followed during the procurement from the Indian region,
- conduct necessary audits and verify whether all procurement activities are being carried out in 100% adherence to the defined procurement process,
- lead the team for procurement audits,
- promote awareness of Airbus ethics and compliance guidelines to the suppliers,
- identify and report any unethical or non-compliant behaviour / activity in the supply chain,
- provide support to the European team in their contractual negotiations with Indian suppliers.

17. In respect of the PO function, which is in relation to the existing suppliers who have already entered into a contract with Airbus, France, the following services are rendered by the Appellant to Airbus, France:

- provide support to tier 1 and tier 2 supplier operations (Running activities/Recovery/Transfer of work/assessments) on requirements of commodities and on agreed level of delegation. All activities shall be in line with Airbus quality standards and processes
- Providing support on driving improvement of supply chain through continuous onsite assessments, coaching & action plan review with the suppliers with a focus on Procurement Operations or commodities operational priorities
- Providing continuous update of supplier operations and industrial maturity to Central commodities/Global Head of supplier development



- Carry out risk review from Indian supplier landscape while assessing impact on Airbus programs and update the information.

We also take note that the Agreement specifically excludes from the scope of the Appellant's activities the decision to select any supplier and terms & conditions of the supply, which remain entirely with Airbus, France. Further, the Appellant is also not responsible for issuance of purchase order or payment to the supplier for the supply made by the vendor.

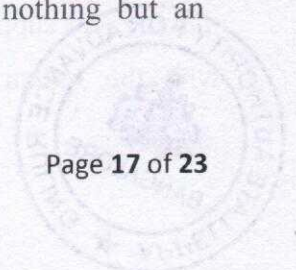
18. A reading of the scope of the activities undertaken by the Appellant as laid out in the Schedule 1 to the Agreement indicates that the Appellant is responsible for providing Airbus, France with complete information about potential Indian suppliers who will supply the aircraft parts to Airbus, France. This entails the Appellant to appraise the local vendors about the requirement of Airbus France in terms of quality, timelines and Airbus ethics and guidelines. The Appellant also provides the prospective vendors with solutions to meet the required expectations. The inputs provided by the Appellant assist Airbus, France in deciding which Indian supplier to enter into a contract with. Once the Indian vendor is selected by Airbus France, the Appellant may provide support to the European team in their contractual negotiations with the Indian suppliers. Once a supplier is identified by Airbus France and a contract is entered into, the Appellant is responsible for carrying out onsite assessments with the Indian suppliers to ensure that their principal Airbus France, does not face any disruption in the supply chain and also to improve the supply chain standards. The entire gamut of the activities as mentioned above are carried out by the Appellant with the ultimate aim of assisting their Principal i.e Airbus France to procure a supply of goods from Indian vendors. Without the Appellant's assistance, Airbus France will not be in a position to identify a vendor in India. Further, the Appellant's role does not end with identifying the potential suppliers in India. It extends even after Airbus France enters into a contract with the supplier by continuously assessing the delivery operations of the Indian supplier to ensure that there is no disruption in the supply chain. This is a facilitation rendered by the Appellant to Airbus France whereby the Indian suppliers are supported to comply with Airbus standards and processes. Therefore, the Appellant's role is nothing but arranging or facilitating a supply between two persons i.e between the Indian supplier and Airbus France.

19. During the personal hearing, the Advocate for the Appellant has forcefully put forth the argument that there is no supply of goods or services made by the Appellant's principal Airbus France to India; that the principal in France is the recipient of a supply from the Indian suppliers with whom the Appellant has no contractual obligation; that in the absence of any supply



made by their principal in France, the Appellant cannot be termed as an intermediary of the principal. We find this argument unconvincing and without any legal basis. The definition of 'intermediary' as given in Section 2(13) of the IGST Act does not in any way give the impression that the intermediary only arranges or facilitates the supply of goods or services by its Principal to a third party. Such an interpretation is untenable. The requirement as per law is that the intermediary should arrange or facilitate the supply between two or more persons. This supply (main supply) is between two principals and an intermediary renders his service in arranging or facilitating this main supply. In this case, the main supply is a supply of goods (aircraft parts) by the Indian vendor to Airbus France and the Appellant renders a service to Airbus France in arranging for the supply. If it were not for the service rendered by the Appellant in providing information on the potential Indian suppliers and their capabilities, Airbus France could not have entered into contracts with the Indian vendors and the main supply would not have taken place. The fact that the Appellant provides guidance to the local vendors on the expectations and also provides solutions to the local vendors to match the challenges and expectations shows that the Appellant is paving the way for the main supply to take place. The Appellant draws up a strategy to build a strong supplier relationship to ensure that the supply chain between the Indian vendor and Airbus France is maintained and improved upon. The role of the Appellant does not end once a contract is drawn up by Airbus France with an Indian vendor. Rather, continuous onsite assessments are conducted to ensure optimum supplier operations in line with Airbus quality standards and processes. This is again a facilitation rendered to Airbus France to ensure that there is no disruption in the supply chain from the Indian vendors. To put it in a clearer perspective, the Appellant is facilitating his principal Airbus France to procure a supply of goods from Indian vendors.

20. We find that our findings above are supported by the Board in its Circular No 159/15/2021 GST dated 20th Sept 2021. The said Circular clearly states that the concept of intermediary requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. It is also clarified that the main supply is between two principals and the ancillary supply is the service of arranging or facilitating the main supply which is supportive in nature. In this case, the Appellant renders a service to Airbus France in arranging for the main supply between two principals i.e the Indian supplier and Airbus France, to take place. Therefore, there is no doubt that the activity of the Appellant is nothing but an intermediary service.



21. The Appellant has drawn our attention to Illustrations 1 and 3 given in Circular No 159/15/2021 GST to impress upon us that their case will not be covered as an intermediary. The Illustrations 1 and 3 given in the said Circular is reproduced below:

Illustration 1

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

They submitted that, by applying the illustration 1 above to their case, Airbus France was not making any supply of aircrafts to India and neither were they under any obligation/contract with the Indian manufacturers of aircraft parts to arrange or facilitate the supply of



manufactured parts to Airbus France. Hence, they cannot be termed as an intermediary. Similarly, they referred to Illustration 3 of the above-mentioned Circular to impress upon us that they are not an intermediary.

22. At the outset we observe that, as stated in Para 5 of the said Circular, the illustrations given in Para 4 are only indicative and not exhaustive; that determination of whether a particular activity would fall under intermediary service or not would depend upon the facts of the case and the nature of the contract/agreement entered into. Be that as it may, we observe that the scenario given in Illustration 3 of the said Circular goes against the Appellant's argument that supply by the Indian supplier to Airbus France cannot be the main supply. It is their contention that in order to be termed as intermediary of the Principal i.e Airbus, France, the Appellant is required to arrange or facilitate the supply made by the Principal to a third party; that since there is no supply being made by Airbus France to any Indian entity, they cannot be termed as intermediary. As already mentioned, we find this argument untenable. In the Illustration 3 given at Para 4 of the above-mentioned Circular, the Company 'Q' in India is providing intermediary service to an insurance company 'P' located outside India by arranging for a supply of insurance claims processing service from 'R' in India to 'P'. For this intermediary service, Q charges P a commission or service fee. It is stated that in such a case, the supply of insurance claims processing service by 'R' in India to 'P' outside India, is the main supply and Q is arranging or facilitating this main supply. It may be noted that even in this illustration case, there is no supply by 'P' outside India to any client in India. This illustration validates our opinion that in the case before us, the Appellant is rendering a service to Airbus France by arranging and facilitating the supply of goods from an Indian supplier (main supply).

23. Coming to the last condition, the definition of 'intermediary' as given in Section 2(13) of the IGST Act excludes a person who supplies such goods or services or both on his own account. It is the contention of the Appellant that the services being provided to Airbus France are on their own account and they are not engaged in supplying services on behalf of the Principal. The Appellant has placed reliance on the Education Guide 2012 issued by the CBIC under the Service Tax regime and contended that none of the conditions required for qualifying to be 'intermediary service' as explained in the Education Guide are satisfied in their case. In this connection, it would be worthy to analyse the definition of the term "intermediary services" under the GST regime and pre-GST regime. Both the definitions have been mentioned below:



| Under pre-GST regime | Under GST regime |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><u>Rule 2(f) of the Place of Provision of Services Rules, 2012</u></p> <p>"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 'main' service) between two or more persons, but does not include a person who provides the main service on his account</p> | <p><u>Section 2(13) of Integrated Goods and Services Tax Act, 2017 (IGST Act)</u></p> <p>"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.</p> |

24. From the above definitions, in essence, there does not seem to be any difference between the meaning of the term "intermediary" under the GST regime and pre-GST regime. In the pre-GST regime, an intermediary referred to a person who facilitates the provision of a **main** service between two or more person but did not include a person who provided the **main** service on his account. Similarly, in the GST regime, an intermediary refers to a person who facilitates the supply of goods or services or both between two or more persons but excludes a person who supplies **such** goods or services or both on his own account. The phrase 'such goods or services' used in the definition of 'intermediary' implies that the person should not be supplying on his risk and reward entirely, the very goods or services whose supply he is arranging or facilitating. In the instant case, the Appellant is arranging for and facilitating the Principal in procuring a supply of goods from India. He is not undertaking any supply of goods. He is only arranging the contact between the Principal and the Indian supplier and the actual supply of the goods is done by the Indian supplier directly to the Airbus France. The service of facilitating the main supply of goods between the Indian supplier and the Principal is provided by the Appellant to Airbus France. The Appellant is not supplying such goods on his own account and hence, the Appellant does not fall within the ambit of the exclusion contained in the definition of 'intermediary'. Therefore, we find that the Appellant is clearly playing the role of Intermediary for Airbus France, as envisaged under Section 2(13) of the IGST Act, 2017 and we uphold the findings of the lower Authority in this regard.



25. The Appellant has relied heavily on the ruling given by the Authority of Advance Rulings under the Service Tax provisions in the case of GoDaddy India Web Services (P) Ltd Ruling No AAR/ST/08/2016 wherein the Authority therein has ruled that pure marketing and promotion services would not be intermediary services. We have gone through the said ruling. The facts in the said case are that GoDaddy India provides a gamut of services to its client GoDaddy US and provides support services to assist GoDaddy US to develop its brand in India. A ruling was sought whether the various support services provided by GoDaddy India are naturally bundled as a single service being Business support service. The Authority in the said case, after taking note of the fact that the applicant (GoDaddy India) will not be engaged in arranging or facilitating provision of services by GoDaddy US to customers in India, will not secure orders from customers in India or arrange or facilitate the provision of any service by any third party service provider to GoDaddy US, held that the applicant is only providing support services in relation to marketing, branding, offline marketing, etc on principal-to-principal basis to GoDaddy US which are a bundle of services naturally bundled in the ordinary course of business and accordingly is a single service being Business Support Service; that the business support service is the main service provided to GoDaddy US on their own account and hence is not an intermediary service. We find that the facts of the case before us is patently different. The Appellant's activity is significantly one of arranging and facilitating the supply of goods by a third-party supplier in India to their Principal in France. It has also been clarified by the Board in Circular No 159/15/2021-GST that the determination of whether or not, a specific service would fall under intermediary service would depend upon the facts and circumstances of the specific case. What is important is that the basic characteristics of intermediary service as laid down in the said Circular are existing. As such the ruling given in the case of GoDaddy India which is based on an entirely different set of facts, does not buttress the case of the Appellant before us. The Appellant has also placed reliance on several other Tribunal decisions (as detailed in Para 6.2 above) to contend that that the lower Authority has erred in holding that their activity is that of an intermediary. We have gone through the relevant decisions but the same do not find favour with us for the reason that the terms of the agreement in the Appellant's case is unique and does not merit comparison with the agreements referred to in the cited decisions.

26. As regards the classification of the services provided by the intermediary, we find that the services of the Appellant, who is acting as an intermediary, would aptly be classified under the Heading 998599 as 'Other support services'. The Explanatory Notes to the Scheme of



Classification of Services which is a guiding tool for classification of services indicates the scope and coverage of the Heading 998599 as specifically covering business services of intermediaries and brokers under this heading. The Appellant has contended that their activity is classifiable under Heading 998399 as “Other professional, technical and business services n.e.c”. The Explanatory Notes describe the said Heading as follows:

998399 Other professional, technical and business services, n.e.c – *This service code includes drafting services (detailed layouts, drawings, plans and illustrations of buildings, structures or components from engineering and architectural specifications, done by architectural draftsmen or engineering technicians); compilation services of facts and information (i.e databases) n.e.c.*

From the above description, we do not find any merit in the Appellant’s contention of classifying their activity under Heading 998399. It is trite law that in classification matters, a specific heading is preferred to a general heading. In this case, the services of intermediaries is specifically covered under Heading 998599 and hence the intermediary service rendered by the Appellant is correctly classifiable under the said Heading.

27. The Appellant has also made a plea that the services provided by them to Airbus France will amount to an export of service in as much as they have fulfilled all the conditions contained in the definition of ‘export of service’ as per Section 2(6) of the IGST Act. The definition of “export of services” as per Section 2(6) of IGST Act, 2017 is as follows :-

“*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;”

28. Thus, one of the important requirements for supply of any service to be treated as ‘export of service’ is that the place of supply of service is outside India. The provisions for determination of place of supply of services where the location of the supplier or the location



of the recipient of services is outside India are contained in Section 13 of the IGST Act, 2017. Section 13(8)(b) of the said Act stipulates that the place of supply in the case of intermediary services will be the location of the supplier of service. In this case, the activity of the Appellant who is the supplier of intermediary service i.e collection of information of parties in India, analysis of potential suppliers and skill development of existing suppliers, are all very much done in India, which is the location of the supplier of intermediary service. Therefore, by virtue of Section 13(8) (b) of the IGST Act, it automatically flows that the place of supply of the intermediary service provided by the Appellant to Airbus France, is in India. When the place of supply is in India, it does not satisfy one of the conditions for export of service, that the place of supply should be outside India. Therefore, we hold that the intermediary services provided by the Appellant to Airbus France, do not qualify as export of service.

29. In view of the foregoing, we pass the following order.

ORDER

We uphold the order No. KAR ADRG 31/2021 dated 01/07/2021 passed by the Advance Ruling Authority and the appeal filed by the Appellant M/s. Airbus Group India Private Limited, stands dismissed on all accounts.



(RANJANA JHA)

Member

Karnataka Appellate Authority
for Advance Ruling

To, 

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Bangalore East Commissionerate
4. The Assistant Commissioner, LGSTO-35A, Bangalore
Office folder



(SHIKHA C.)

Member

Karnataka Appellate Authority
for Advance Ruling

