THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/RS-SK/35/2020-21 **Date-** 22.03.2021

BEFORE THE BENCH OF

(1) Shri Rakesh Kumar Sharma, MEMBER (Central Tax)

(2) Shri Sanjeev Kumar, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Prettl Automotive India Pvt. Ltd., No. 433, Shed No. 1 & 2, Near Weikfield, Lonikand Taluka, Haveli, Pune, Maharashtra- 412216
GSTIN Number:	27AAGCP8432N1ZU
Clause(s) of Section 97, under which the question(s) raised:	(e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing:	04.03.2021
Present for the Appellant:	Shri Deepak Naik
Details of appeal:	Appeal No. MAH/GST-AAAR-09/2020-21 dated 08.01.2021 against Advance Ruling No. GST-ARA-20/2019-20/B-59 dated 15.12.2020
Jurisdictional Officer:	Deputy Commissioner CGST & C.Ex., Division -V, Pune-I Commissionerate.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as "the CGST Act" and "MGST Act"**] by M/s. Prettl Automotive India Pvt. Ltd, No. 433, Shed No. 1 & 2, Near Weikfield, Lonikand Taluka, Haveli, Pune, Maharashtra- 412216 **("hereinafter referred to as "the Appellant")** against the Advance Ruling No. GST-ARA-20/2019-20/B-59 dated 15.12.2020, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **MAAR**).

BRIEF FACTS OF THE CASE

3.1 The Appellant are, *inter alia,* engaged in manufacture and supply of electric transformers and static converters, electric wire and cables for transmission of electricity, equipment for spark ignition, installation and commissioning services for t electric transformers.

3.2 M/s. Prettl GmbH, the company incorporated in Germany (hereinafter referred to as **"the Principal"**), is the holding company of the Appellant. The Prettl GmbH desires to join the 'develoPPP.de programme' run by the German Federal Ministry for Economic Cooperation and Development. Under the 'develoPPP.de programme', the German Government enters into development partnerships with the private sector in order to promote services provided by the private sector that go beyond entrepreneurial commitment and make driving force for economic, social and ecological sustainable development.

3.3 Under the 'develoPPP.de programme', the German Government and participating company jointly bear the cost of project and provide financial assistance. In this connection, the Prettl GmbH has entered into a Service Contract dated 01.03.2018 to provide financial assistance and funding under the 'develoPPP.de programme' up to 31.03.2020.

2.4 Under the aforesaid contract entered with M/s. Prettl GmbH, the Appellant is required to undertake the following activities for the consideration received by them in the form of financial assistance from its holding company.

- Construction of a separate 400 sqm training center within a 2,500 sqm production hall, divided into a theory room and a practical training workshop;

- Implementation of training measures for trainers, apprentices, unskilled workers and students or college graduates as well as integration of teaching content at four educational institutes;
- One-year training of 80 vocational students (20 mechanics and 60 electrical engineers from the Industrial Training Institute Pune and Don Bosco)
- Two-year training of 350 unskilled workers to become mechanics, electricians, mechatronics technicians;
- Qualification of 25 college graduates as application and design engineers;
- Qualification of four suppliers to obtain "PRETTL certification";
- All other activities not expressly listed here which are necessary for the successful completion of the 'develoPPP.de project'.

2.5 In view of the above factual position, the Appellant, for the purpose of seeking clarity regarding the applicability of GST on the financial assistance received by them for carrying out the aforesaid activities in terms of the said Agreement entered with their German holding company, had filed an application for the Advance Ruling before the MAAR. The questions asked by the Appellant in their Advance Ruling Application were as under:

(i) Whether the financial assistance to be received by the Appellant are covered as 'consideration for supply' and the activity is covered under the meaning of 'supply of services' in terms of section 7 of the Central Goods and Services Tax Act, 2017 / Maharashtra Goods and Services Tax Act, 2017?

(ii) If the above activity is not considered as 'supply of services' then whether the said activity is to be considered as 'exempted supply' or 'non-taxable supply' and accordingly input tax credit is to be reversed in accordance with section 17 of CGST Act, 2017 / MGST Act, 2017 read with rule 42 of Central Goods and Services Tax Rules, 2017 / Maharashtra Goods and Services Tax Rules, 2017?

(iii) If, the above activity is considered as supply of service, then whether the same is classifiable under SAC 9997 as 'other services nowhere else classified' under Sl. No 35 of the Notification-11/2017- Central Tax (Rate) dated 28.06.2017 / Sl. No. 35 of the Notification- 11/2017-State Tax (Rate) dated 29.06.2017 / Sl. No. 35 of the Notification-8/2017- Integrated Tax (Rate) dated 28.06.2017?

(iv) Where the said activity if considered as supply of service, then whether the same is covered as 'Zero Rated Supply' and qualifies for 'export of service' under the provisions of the Integrated Goods and Services Tax Act, 2017 and can be exported without payment of IGST?

2.6 The MAAR, vide **Order No. GST-ARA-20/2019-20/B-59 dated 15.12.2020**, held that the gamut of activities carried out by the Appellant in lieu of the financial assistance received from their German Holding Company would constitute **supply of services** in terms of Section 7 of the CGST Act, 2017 and the same can be classified under SAC **999792 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** bearing the description **"Agreeing to do an act"**. The MAAR has based the aforesaid Advance Ruling on the observation that the Appellant is undertaking the aforesaid gamut of activities on behest of their German Holding Company, i.e., M/s. Prettl GmbH, in terms of the Service Agreement entered between them, and thereby, their activities would be seemingly covered under the SAC **999792** bearing the description **"Agreeing to do an act"**.

2.7 As regards the issue of the said supply undertaken by the Appellant, being Zero Rated Supply, attributable to the said supply being in the nature of export of services, the MAAR observed that the said activities undertaken by the Appellant would be construed as organisation of the educational events which would eventually be covered under Section 13(5) of the IGST Act, 2017. As a result of this, the place of supply of the said services would be the location of the supplier of the services. Since, in the instant case, the place of the supplier of the services, i.e., the location of the Appellant, is in India, the said supply would not fulfil the criteria of export laid under clause (iii) of Section 2(6) of the IGST Act, 2017. In view of this, the MAAR held that the said supply by the Appellant would not be considered as export of services, and hence, the same is not a Zero- Rated Supply.

2.8 The Appellant, being aggrieved by the answer given by the MAAR in respect of the question no. 4 above, i.e., the issue related to the export of the services, the Appellant has preferred the present appeal before the Maharashtra Appellate Authority for Advance Ruling (hereinafter referred to as "**the MAAAR**").

GROUNDS OF APPEAL

3. The Appellant, in their Appeal memorandum, have, *inter-alia*, mentioned the following grounds:

(i) That when the MAAR has already ruled that the activities carried out by the Appellant are classifiable under SAC 999792 in terms of the Notification No. 11/2017 - Central Tax (Rate), dated 28.06.2017, another conclusion of the MAAR, that the activity of the Appellant is event based / event related, is mere conjecture and surmise in absence of any evidence in support of the said observation that the activities or services supplied by the Appellant to the German Holding Company M/s. Prettl GMBH are related to the event.

(ii) Once the classification of the service has been held by the MAAR as 'Agreeing to do an act' specified under the SAC 999792 of the Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017, then the MAAR cannot hold that the services provided by the Appellant to their German Holding Company would be event based / event related services for the purpose of determining the place of supply. That is, on one hand when it has been held that the services supplied by the Appellant are covered as 'Agreeing to do an Act' and classifiable under the SAC 999792, then on the other hand, the services cannot be treated as event based / event related services for the purpose of seeking 'place of supply' of the said services. Therefore, the impugned MAAR Order is self-contradictory on this point.

(iii) That there is no event held by the Appellant at all. Even, the MAAR Order has also not established that any event has been held in India.

(iv) That the activities of the Appellant have already been construed by the MAAR as 'Agreeing to do an act' and the same has been held to be classified under the SAC 999792 and not as any services relating to the event, hence, the same are not covered under any sub rule (3) to (13) of Section 13 of the IGST Act, 2017. Therefore, provisions of Section 13 (2) of the IGST Act, 2017 (i.e., the default rule), prescribing the place of supply as 'location of the recipient', will be applicable in the present case. Since, the recipient i.e. the Prettl GmbH is incorporated and located outside India and also do not have any permanent establishment in India, the place of supply of service shall be outside India. Therefore, the place of performance of services by the Appellant or the location of the Appellant in India has no relevance at all.

(v) That the services provided by the Appellant, which have been classified by the MAAR under SAC 999792 bearing the description "Agreeing to do an act", will qualify as an export of service in terms of Section 2(6) of the IGST Act, 2017,

and accordingly will be considered as 'zero rated supply' in terms of Section 16(l)(a) of the IGST Act, 2017.

4. The Respondent in the instant matter, i.e., Deputy Commissioner, Division-5, Pune-I Commissionerate, vide letter dated 04.02.2020, has made the following submissions:

(i) That the major activities to be carried out by the Appellant are the construction services and the commercial training services;

(ii) That the construction services provided by the Appellant, by way of construction of the Training Centre, are in relation to "immovable property", which is located in India. Accordingly, as per the provisions of the Section 13(4) of the IGST Act, 2017, the place of supply will be the place where the immovable property is located or intended to be located. In this case, the place of supply will be in India as the immovable property, i.e., the training centre is in India;

(iii) That the training services provided by the Appellant are performance-based services which are provided to the persons/individuals located in India. Therefore, the place of Supply of the said performance- based services will be in India as per Section 13(3)(b) of the IGST Act, 2017, even though the Appellant is receiving the consideration in convertible foreign exchange from its principal based in Germany. Therefore, the said supply of services will not be construed as export of services as all the conditions for the export, prescribed under Section 2(6) of the IGST Act,2017, are not satisfied.

PERSONAL HEARING

7.1 A hearing in the matter was held in the virtual mode via video conferencing on 04.03.2021, which was attended by Shri Deepak Naik as the representative of the Appellant, and by Ms. Usha Bhoyar, Deputy Commissioner as the Jurisdictional officer/Respondent, in the subject appeal matter.

7.2 During the course of the said hearing, Shri Deepak Naik reiterated the earlier written submissions made in the Appeal memorandum and the additional submissions dated **01.03.2021** filed in response to the reply dated **04.02.2021** filed by the jurisdictional officer/Department in the subject appeal matter. The extracts of the aforesaid additional submissions dated **01.03.2021** filed by the Appellant are as under:

(i) that the Department/Respondent has not identified the place of supply by referring anyone of the specific provisions of the IGST Act, 2017 in as much as the

Department/Respondent has discussed two alternate options in connection with the place of supply in terms of Section 13(3)(b) and Section 13(4) of the IGST Act, 2017;

(ii) that the Department/Respondent even at the Appellate level is not sure and therefore has not pointed out any one specific provision in support of their stand with respect to the place of supply;

(iii) that since the Department/Respondent has already taken stand that place of supply in the subject case will be determined by Section 13(3)(b) and Section 13(4) of the IGST Act, 2017, which was eventually rejected by the MAAR as the MAAR held the services under question under SAC 999792 bearing the description "Agreeing to do an act" and determined the place of supply of the impugned services as per Section 13(5) of the IGST Act, 2017, the Department cannot refer to and rely upon the same stand taken by it before the MAAR;

(iv) that the Department has not challenged by way of Appeal the classification of the impugned services which were held by the MAAR under the SAC 999792 bearing the description "Agreeing to do an act", the same is binding on the Department;

(v) that the recipient of the services in the instant case are M/s. Prettl GmbH in terms of Section 2(93)(a) of the CGST Act, 2017 since M/s. Prettl GmbH are liable to make the payment in respect of the impugned project while the beneficiaries like apprentice, unskilled workers and students will not be treated as recipient of the services as no payment is received from them.

(vi) that these educational institutions have their own arrangements relating to the admissions of the students, imparting of knowledge, lessons, skills and training in their classrooms and workshops. As most of these courses are vocational in nature, on-job training (actual training in the production shop of the factory), internship and apprenticeship training is required to be undergone by the students at some of the factory; that in the present case, some of the educational institutions have completed the practical training in the factory premises of the Appellant;

(vii) that the Appellant has no role in selection, admission process, and overall conduct of the course. Selection of students for the program for on-job practical training is purely under the control of these institutions;

(viii) that Section 13(3)(b) of the IGST Act, 2017 relating to place of supply (i.e., performance test) is applicable only where individuals are represented as recipient of service or acting on behalf of the recipient; that in the present case, the

individuals and beneficiaries, like, students, unskilled workers, and apprentices, are neither the recipients of the services itself (i.e., Prettl GmbH) nor they are appearing as employees or representatives or acting on behalf of the Prettl GmbH;

(ix) that the provision under Section 13(4) as being contended by the Department is not applicable in the subject case as the said provision covers the services provided in relation to the immovable property; that the Appellant has not provided any services to the recipient in relation to the immovable property;

(x) that the construction of the training centre within the production area of the Appellant's factory as per the Agreement entered with their Principal along with the various machineries, tools, equipment used for the on-job training of the candidates under the impugned programme are not transferred to their Principal, i.e., Prettl GmbH in any form or manner; that the said training areas with all facilities is also used by the Appellant in the ordinary course for training to its regular employees as well;

(xi) that the CGST Department has put forth the aforesaid contention regarding the determination of the supply as per the provision laid under Section 13(4) of the IGST Act, 2017 which was rejected by the MAAR; that since the Department has not challenged the classification of the impugned services which have been held by the MAAR under the SAC 999792 bearing the description "agreeing to do an act" under the Appeal, the same would be binding on the Department in as much as the Department cannot rely upon the same contention again related to determination of the place of supply in accordance with Section 13(4) of the IGST Act, 2017;

(xii) that the Appellant is also willing to file an additional submission in respect of the issue of place of supply arisen during the course of personal hearing wherein it was contended by the Respondent that the since the said training services provided by the Appellant are being performed in India, the place of supply of the said services will be determined in terms of Section 13(3)(b) of the IGST Act, 2017;

7.3 Ms. Usha Bhoyar, Deputy Commissioner and the jurisdictional officer in the subject appeal matter, reiterated her earlier written submissions filed before us wherein it has been contended that the said services provided by the Appellant are in relation to an immovable property, i.e., the training centre, which is located in India. Hence, the place of supply of the impugned services will be in taxable territory in terms of Section 13(4) of the IGST Act, 2017. Alternatively, it has also been contended by the Respondent that

the services provided by the Appellant are performance-based services, and the same are being provided to the individuals which are located in India. Hence, the place of supply of the said services will be in taxable territory in terms of the Section 13(3)(b) of the IGST Act, 2017. Thus, in view of the aforesaid position, it has been contended that the transaction between the Appellant and their holding company, i.e., Prettl GmbH will not qualify for the export of services as per the provisions laid under Section 2(6) of the IGST Act, 2017.

Additional Submissions dated 05.03.2021

7.4. The extract of the additional submissions dated 05.03.2021 filed by the Appellant post the personal hearing scheduled on 04.03.2021 are as under:

(i) that the activities carried out and cost incurred on the project by the Appellant are not limited only on account of training to individuals such as apprentice, unskilled workers, students but the same are also carried out to perform other functions, like creation of training area and training facilities such as plants and machineries, tools and equipment which are also used for the in-house training of their regular employees, providing support to the educational institutions, namely-

(a) in designing their course contents, in developing their teaching aids and instruction materials like working models, slides, video and work books,

(b) in campus development like solar lighting systems, garden development, drinking water facilities and the like,

(c) sponsoring course fees, uniforms, canteen and hostel fees, social and cultural activities and the like,

(d) payment of stipend to apprenticeship trainees, etc.

(ii) that the cost incurred on afore-mentioned various activities by the Appellant are far more than the than the cost incurred on the mere training to individuals, thereby, evidencing that the activities carried out and cost incurred on the project by the Appellant are beyond mere training to the individuals.

(iii)that where the activities carried out by them are only limited to the training to individuals, the MAAR would have classified the same under the SAC 999293 as "commercial training and coaching services" .

(iv) that the provisions of Section 13(3)(b) of the IGST Act, 2017are applicable only if two conditions, mentioned below, are satisfied:

(a) the services are supplied to individuals, who is represented either as the recipient of services or a person acting on behalf of the recipient;

(b) requirement of the physical presence of the individuals with the supplier for the supply of services;

(v) that the individuals and beneficiaries, like, students, unskilled workers, and apprentices, are neither the recipients of the services itself (i.e., Prettl GmbH) nor they are appearing as employees or representatives or acting on behalf of the Prettl GmbH; hence the condition mentioned at (iv) (a) above is not satisfied;

(vi) that activities carried out by them can be considered as bundle of services which are not limited to the training to the individuals only but the same are beyond this. Further all the afore-mentioned activities do not require the physical presence of an individuals with the Appellant for the supply of services, thereby, not satisfying the condition laid under (iv)(b) above;

(vii) In view of the various submissions made hereinabove, the place of supply cannot be determined in terms of Section 13(3) to 13(13) of the IGST Act, 2017. Therefore, provision of Section 13(2) ibid., prescribing the place of supply as the location of the recipient, will be applicable in the subject case.

DISCUSSIONS AND FINDINGS

8. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with other relevant documents. We have also examined the impugned ruling passed by the Maharashtra Advance Ruling Authority, wherein it has been held that the services under question will be classified under the Service Accounting Code 999792 of the Annexure to the Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017, bearing the description 'Agreeing to do an act'. As regards the question (iv) asked by the Appellant as to whether the said activities carried out by the Appellant qualify for 'export of service' under the provisions of the Integrated Goods and Services Tax Act, 2017 and can be exported without payment of IGST, the MAAR has held that the since the activities undertaken by the Appellant in terms of the Service Agreement entered with their German holding company can be construed as "**event based services**", the place of supply in that case would be determined by Section 13(5) of the IGST Act, 2017, which provides that place of supply in such cases would be the place where the event is actually held. The MAAR has further held that since the said event has taken place in India, i.e., in the taxable territory,

therefore, the services provided by the Appellant do not qualify for the export of services in terms of Section 2(6) of the IGST Act, 2017.

9. Having gone through the above appeal memorandum, and the rulings of the Maharashtra Advance Ruling Authority (MAAR) on the question raised by the Appellant, the questions raised by the appellant before us is as under;

(a) Whether the impugned activity if covered under the meaning of 'supply of service', whether the same is covered as 'Zero Rated Supply' and qualifies as 'export of service' under the provisions of the IGST Act, 2017 and can be exported without payment of IGST?

The Appellant has stated in the grounds of appeal that the appeal is limited to the answer given to question no 4. However, in order to decide whether the activity of the Appellant is an export of service or not, the 'place of supply' of the service has to be decided. In turn, the place of supply as given under Section 13 of the IGST Act, cannot be decided without understanding the nature of the activity and the classification of the service. Therefore, we shall first understand the activity of the Appellant in the present case.

10. The activities performed by the Appellant are reproduced hereinunder:

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

On perusal of the above, it is seen that the Appellant is undertaking multiple activities under different categories, i.e., activities related to construction, training, etc., against the lumpsum amount paid by their Principal, which can clearly be considered as "composite supply" in terms of Section 2(30) of the CGST Act, 2017. The definition

of the "composite supply" as per Section 2(30) of the CGST Act, 2017 is reproduced herein under:

> *(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*

In the present case, the Appellant is undertaking multiple taxable supplies of services such as construction of training workshop, providing training to apprentices, unskilled workers, students of various technical institutes, etc. All these activities, which are being supplied in conjunction with each other, can aptly be said to be naturally bundled where the principal supply will be training services being provided to the various candidates as mentioned above. The activities related to the construction of the training workshop can be construed as ancillary services to this principal supply, i.e., training service, provided to various candidates as the same are essential for the said principal supply.

11. Through their additional submissions dated 01.03.2021 and 05.03.2021, the Appellant have submitted that apart from the training services provided to the apprentices, unskilled workers, and students, they are undertaking various other activities such as construction of the training area and provision of the training facilities such as plants and machineries, tools, equipment, etc., used for providing training to the candidates, providing support to the educational institutions in designing their course contents, in developing their teaching aids and instruction materials like working models, slides, video and work books, in campus development like solar lighting systems, garden development, drinking water facilities and the like, sponsoring course fees, uniforms, canteen and hostel fees, social and cultural activities and the like, payment of stipend to apprenticeship trainees, etc. On the basis of the aforesaid activities, it has been contended by the Appellant that since they are not merely providing training services to the apprentice, unskilled workers, students but also undertaking aforementioned activities which are beyond the training services as being purported by the Respondent, hence, their impugned supply will not be covered under the **SAC 999294** bearing the description ***"Other education and training services nowhere else classified"*** and the place of supply of the aforesaid bundle of services will not be covered by Section 13(3)(b) of the IGST Act, 2017 in view of not complying with the two conditions

prescribed therein. The said two conditions prescribed under Section 13(3)(b) are enumerated hereinbelow:

(a) the services are supplied to individuals, who is represented either as the recipient of services or a person acting on behalf of the recipient;

(b) requirement of the physical presence of the individuals with the supplier for the supply of services;

It has further been averred by the Appellant that the individuals and beneficiaries, like, students, unskilled workers, and apprentices, are neither the recipients of the services (i.e., Prettl GmbH) nor they are appearing as employees or representatives or acting on behalf of the Prettl GmbH, thereby, not complying with the first condition, i.e., (a) mentioned above. It has further been contended that the activities carried out by them can be considered as bundle of services which are not limited to the training to the individuals only but the same are beyond this. Further these activities do not require the physical presence of an individuals with the Appellant for the supply of services, thereby, not satisfying the condition laid under (b) above. Hence, in view of the submissions made hereinabove, they have contended that the place of supply in this case cannot be determined in terms of Sections ranging from 13(3) to 13(13) of the IGST Act, 2017, therefore, the provision of Section 13(2) ibid., prescribing the place of supply as the location of the recipient, will be applicable in the subject case.

12. With regard to the above additional submissions filed by the Appellant, it is observed that all the activities being carried out by the Appellant are either ancillary or incidental to the principal supply, which in this case, is the supply of training services since it is not in dispute that all these activities carried out by the Appellant are towards achieving the main objectives, i.e., providing training to the candidates, like apprentices, unskilled workers, students, etc. as per the terms and conditions of the Agreement entered with their German Principal, i.e., M/s. Prettl GmbH for which they are receiving consideration from their Principal. It is noteworthy that the Appellant themselves have submitted before this Appellate Authority that they are required to undertake the following activities under the said develoPP.de programme run by their German Principal M/s. Prettl GmbH for the consideration in the form of financial assistance from its holding company/Principal.

- Construction of a separate 400 sqm training center within a 2,500 sqm production hall, divided into a theory room and a practical training workshop;

- Implementation of training measures for trainers, apprentices, unskilled workers and students or college graduates as well as integration of teaching content at four educational institutes;
- One-year training of 80 vocational students (20 mechanics and 60 electrical engineers from the Industrial Training Institute Pune and Don Bosco)
- Two-year training of 350 unskilled workers to become mechanics, electricians, mechatronics technicians;
- Qualification of 25 college graduates as application and design engineers;
- Qualification of four suppliers to obtain "PRETTL certification";
- All other activities not expressly listed here which are necessary for the successful completion of the 'develoPPP.de project'.

On perusal of the list of aforesaid activities carried out by the Appellant, it is clearly seen that all these activities are performed by the Appellant for the completion of the project run by their German Principal. Since the objectives of the said project is to provide the vocational/on-job training to the various candidates, like, apprentices, unskilled workers, students, etc. from various institutions and colleges to mitigate the investment related risks in developing and emerging countries. Hence, the entire gamut of activities performed by the Appellant can be construed as composite supply where the principal supply will be supply of training services to the various candidates from the selected institutions with all other supplies being ancillary and incidental to the principal supply.

13. Now, once the activities undertaken by the Appellant are held as composite supply where the training service being imparted to the various candidates is the principal supply, the said supply will squarely be covered under the **SAC 999294** prescribed at Sl. No. 600 of the Annexure to the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and bearing the description ***"Other education and training services nowhere else classified"***.

14. However, on perusal of the impugned Advance Ruling Order dated 15.12.2020, it is seen that MAAR has classified the activities undertaken by the Appellant under the **SAC 999792** bearing the description ***"Agreeing to do an act"*** in terms of the entry at Sl. No. 718 of the Annexure to the Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017. As regards the aforesaid ruling given by the MAAR, it is observed that the activities performed by the Appellant, which is a composite supply having training services as the principal supply as discussed hereinabove, can be aptly classified under

the more specific **SAC 999294** bearing the description ***"Other education and training services nowhere else classified"***, rather than the SAC **999792** bearing the description ***"Agreeing to do an act".***

15. Having held that the impugned activities of the Appellant would be classified under the **SAC 999294** bearing the description ***"Other education and training services nowhere else classified"***, the next question before us is related to the place of supply of the impugned services. Though, in the earlier cases, this Appellate Authority has refrained from answering the questions related to the determination of "**place of supply**" as the Appellate Authority was of the opinion the determination of the place of supply was not under the scope of the Advance Ruling, the same was not expressly enumerated in the list of questions prescribed for seeking the Advance Ruling in terms of Section 97(2) of the CGST Act, 2017. However, we are inclined to take up this issue of determination of the place of supply in respect of goods or services or both after the pronouncement of Hon'ble Kerala High Court Order dated 03.02.2020 in the case of ***Sutherland Mortgage Services Inc. vs. Principal Commissioner of Customs, Central GST and Central Excise, Kochi [2020 (3) TMI 186-Kerala High Court],*** wherein the Hon'ble High Court during the course of the judicial review of the Advance Ruling pronounced by the Kerala Advance Ruling Authority *inter-alia* observed that the provision as per clause (e) of sub-section (2) of Section 97 of the CGST Act, 2017 is in wide terms and the Advance Ruling Authority is obliged to provide the Advance Ruling in all the matters pertaining to the determination of the liability to pay tax on any goods or services or both so that the applicant could get due clarity and precision about various aspects of taxation in the transactions undertaken by them. The High Court in the aforesaid case went on to hold that even the question related to the "place of supply", which has not been expressly mentioned under sub-section (2) of Section 97 of the CGST Act, 2017, would come under the jurisdiction of the Advance Ruling for the purpose of deciding the issue pertaining to the determination of the liability to pay tax on any goods or services or both, as enumerated under clause (e) of the Section 97 (2) of the CGST Act, 2017.

16. As said earlier, to ascertain whether it is an export of service, the conditions given under Section 2(6) of the IGST Act have to be fulfilled. In the present case, the location of the supplier i.e. the Appellant is in India. The recipient in the present case is the German company- as per Section 2 (93)(a) of the CGST Act, 2017, the person who is liable to pay the consideration is the recipient. This brings us to the question of place of supply

of the impugned services and for that we would like to examine the nature of services provided by the Appellant. Since it has been established that the Appellant is providing composite services of which the training services is the principal supply, it can be said that the Appellant is undertaking the performance-based service where the said training services are supplied to individuals, such as apprentices, unskilled workers, students of various technical institutes and colleges, who can be said to be representing on behalf of the recipient, i.e., the Principal located in Germany as the Appellant are receiving the consideration/financial assistance for undertaking the aforesaid training services being provided to above-said individuals from their German Principal, therefore, it can unambiguously be said that the above-mentioned individuals whom the Appellant are rendering training services are acting on behalf of the recipient, in this case, the German Principal of the Appellant. Further, these individuals need to be present physically in the training workshop constructed by the Appellant for receiving the training services as the said training classes, inter-alia, involves various classroom teaching and on-job trainings pertaining to different trades and field. Thus, without the physical presence of the individuals in the training workshops owned by the Appellant, it is not viable at all for the Appellant to impart the said technical training. From the foregoing, it is established beyond doubt that the activities undertaken by the Appellant by way of providing training services to the individuals acting on behalf of their Principal are performance-based services. Since, in this case, the said services are performed at the premises of the Appellant, which is in India, the place of supply of the impugned services will also be in India in terms of Section 13(3)(b) of the IGST Act, 2017, which is being reproduced hereinunder:

Section 13(3): The place of supply of the following services shall be the location where the services are actually performed, namely:-

(a) ……..

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services

17. Thus, as regards the question asked by the Appellant as to whether the activities under question will be considered as zero-rated supply in terms of Section 16(1) of the IGST Act, 2017 and qualifies for 'export of service' in terms of Section 2(6) of the IGST Act, 2017, we hold that the said supply of services will not be considered as export of services on account of the above findings that the place of supply of the services under

question will not be outside India, and thereby, not complying with the clause (iii) of the Section 2(6) of the IGST Act, 2017, which stipulates five conditions or clauses that are required to be fulfilled for any supply of service to qualify for export of service. Section 2(6) is being reproduced hereinunder:

(6) "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;

18. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

19. We, hereby, modify the Ruling passed by the MAAR vide Order No. GST-ARA-20/2019-20/B-59 dated 15.12.2020 by holding that the entire gamut of activities undertaken by the Appellant at the behest of their Principal will be aptly classified under SAC 999294 prescribed at Sl. No. 600 of the Annexure to the Notification No. 11/2017-C.T. (Rate), dated 28.06.2017 and bearing the description ***"Other education and training services nowhere else classified"***. As regards the question as to whether the activities under question will be considered as zero-rated supply in terms of Section 16(1) of the IGST Act, 2017 and qualifies for 'export of service' in terms of Section 2(6) of the IGST Act, 2017, it is, hereby, held that the said supply of services will not be considered as export of services on account of the findings that the place of supply of the services under question, which are performance-based services in terms of Section 13(3)(b) of the IGST Act, 2017, will be in India, and not outside India, and thereby, not complying with the clause (iii) of the Section 2(6) of the IGST Act, 2017. Thus, the Appeal filed by the Appellant is not maintainable and hence, hereby, dismissed.

Sanjiv Kum

(SANJEEV KUMAR)
MEMBER

22/03/2021

(RAKESH KUMAR SHARMA)
MEMBER

Copy to the:

1. **Appellant;**
2. **AAR, Maharashtra**
3. **Pr. Chief Commissioner, CGST and C. Ex., Mumbai**
4. **Commissioner of State Tax, Maharashtra**
5. **Deputy Commissioner CGST & C.Ex., Division -V, Pune-I Commissionerate.**
6. **Commissioner, Pune-I Commissionerate**
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