

Survey on Indian market trends are not intermediary services – AAR, Maharashtra

Background

Authority for Advance Ruling, Maharashtra¹ has recently held that survey of market trends not involving conclusion of contracts, acceptance of sales orders, invoicing, determination of sales prices, rebate, discounts, resolution of customer's complaints or settlement of disputes with customers are not intermediary services.

Facts of the case

Asahi Kasei India Pvt. Ltd. (applicant) a subsidiary of Asahi Kasei Corporation, Japan, had entered into a service agreement with Asahi Japan and marketing service agreement with various group companies of Asahi Kasei Group. The scope of work under the agreement broadly covered –

- Carry out research on the functions viz. corporate accounting, finance, personnel, research and development, quality assurance, intellectual property of the holding company and provide report thereon
- Provide report on the economic, industrial and technical information of the products
- Provide assistance in liasoning and coordinating activities
- Market surveys of the products
- All other related services pertaining to the above activities.

Basis the above facts, the applicant had filed an application seeking advance ruling on the following

- Whether the services supplied by the applicant under the service agreement and marketing agreement would constitute as supply of 'support services' or as supply of 'intermediary service'?
- Whether the services supplied would qualify as export of services?

AAR Ruling

Dissecting the agreement entered by the applicants with its parent company and with the group companies, it was held that the relationship between the parties is that of independent contractors and not principal-agent.

The applicant does not carry out activities such as conclusion of contracts, acceptance of sales orders, invoicing, determination of sales prices, rebate, discounts, resolution of customer's complaints or settlement of disputes with customers. It provides services on its own account to augment the business of the group companies. Thus it was held that the services provided by the applicant cannot be classified as intermediary services.

Research work on matters relating to functioning of the holding company and services in the nature of survey of market trends of the products has been held to be classified as 'other support services' and 'market research services' respectively.

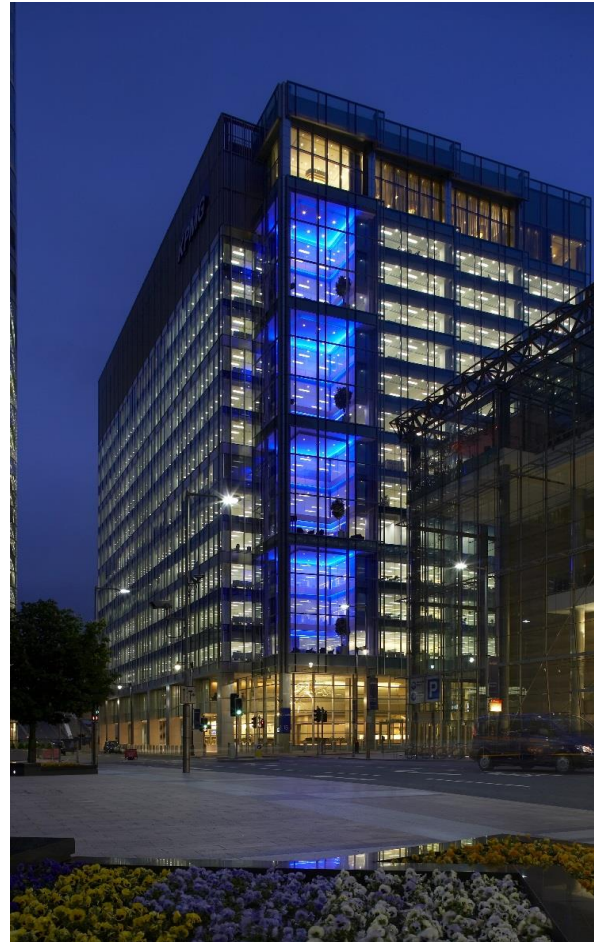
Accordingly, AAR had concluded that back-office support services of market research and survey of Indian market trends carried out for overseas group companies in the instant case cannot be considered as intermediary services and thus would constitute as export.

¹ Asahi Kasei India Pvt. Ltd [2019-VIL-10-AAR]

Our comments

An earlier ruling passed by AAR, Maharashtra in case of Vserve Global² had held that back office supplies qualify as intermediary services and hence not treated as exports. Ruling in the instant case is a welcome ruling as it has evaluated the scope of work into different baskets and accordingly determine whether the supply constitutes as exports.

Thus, now companies may be required to evaluate the scope of services appropriately before applying the rulings passed by the AARs.



² 2019-VIL-10-AAR

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