

**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE
STATE OF UTTARAKHAND
(Goods and Services Tax)**

Advance Ruling 01/2022-23 , Dated 1st April, 2022

Present:

Shri Anurag Mishra (Member)

Shri Rameshvar Meena (Member)

In Application No: 07/2021-22

1	Applicant	M/s. Dry Blend Foods Pvt Ltd Village Chandrapur, PO Hempur, Udham singh nagar, Uttarakhand- 244716.
2	Jurisdictional Officer	-----
3	Present for the Applicant	Sh. Ashwarya Sharma, Advocate
4	Concerned Officer	None
5	Present for the Jurisdictional Officer	Mrs. Preeti Manral, Deputy Commissioner, SGST-Dehradun
6	Date of receipt of application	11.01.2022
7	Date of Personal Hearing	22.02.2022 (Through video Conferencing)

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Dry Blend Foods Pvt. Ltd., Village Chandpur, P.O.-Hempur, Udham Singh Nagar, Uttarakhand-244716, (herein after referred to as the "applicant"), a company registered under the Companies Act, 2013 and registered with GSTIN- 05AACCD8877D1ZK under the CGST Act, 2017 read with the provisions of the UGGST Act, 2017.

2. In the application dated 11.01.2022 the applicant submitted that they are a manufacturer and carries on the business of supply of inter-alia seasonings, spices, premixes and similar food products to its customers located within and outside India. And in order to supply (export) its goods to customers located outside India, they approach foreign customers both on its own and through third party intermediaries or business facilitators whose job is to search and find customers located outside India and thereafter, the intermediaries connect them with the applicant. After finalizing the terms and condition related to export of goods, payments etc.

with the customers located outside India the Third party intermediaries assist the applicant to export the goods manufactured by them to the prospective buyers who are located outside India.

22 In order to increase its export supply the applicant entered into a Memorandum of Understanding Cum Agreement with one Mr. Bobby Kapoor, a resident of Dubai (UAE), which is an Intermediary' or 'Overseas Commission Agent' or 'Service Provider'.

23 Under the MOU, the said Intermediary, i.e. Mr. Bobby Kapoor, in the instant case, has to provide the primary service of facilitating the export of goods by arranging purchase orders from various customers located in foreign territory and for such facilitation, the applicant would pay consideration to the Intermediary. Thus, the role of such Intermediary is to facilitate/arrange for export of Applicant's goods outside India.

3. In view of the above facts, 'the applicant' is seeking an advance ruling on following issues:

(a) Whether Overseas Commission Agent is covered within the definition of the term 'intermediary' as provided under section 2(13) of the IGST Act, 2017;

(b) Whether services received by applicant from the Overseas Commission Agent falls within the meaning of the term 'import of services' as provided under section 2(11) of the IGST Act, 2017;

(c) Whether the applicant is required to pay GST on RCM basis under section 5(3) of the IGST Act, 2017 on commission paid to the Overseas Commission Agent.

4. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 SGST Act.

5. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

6. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

(a) Classification of any goods or services or both

(b) Applicability of a notification issued under the provisions of this Act,

(c) Determination of time and value of supply of goods or services or both,

(d) Admissibility of input tax credit of tax paid or deemed to have been paid

(e) Determination of the liability to pay tax on any goods or services or both

(f) Whether the applicant is required to be registered

(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

6.2 In the present case applicant has sought advance ruling on classification and determination of the liability to pay tax on supply of services. Therefore, in terms of said Section 97(2)(a) & (e) of CGST/SGST Act, 2017, the present application is hereby admitted.

7. Accordingly opportunity of personal hearing was granted to the applicant on 22.02.2022. Sh. Ashwarya Shanna, Advocate, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun, Concerned Officer from State Authority was also present during the hearing proceedings. She presented the facts and requested the authority to decide the case on merits.

8. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AACCD8877D1ZK Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:

(i) the applicant is a manufacturer-supplier of seasoning, spices, premixes and similar food products to its customers located within and outside India;

(ii) to expand their market, they sometimes enter into an agreement with some specified person, whose job is to search & find out customers, located outside India and to facilitate the supply of goods manufactured by the applicant outside India;

(iii) for such facilitation, the applicant pay commission of a fixed component @ 4000 UD \$ per month plus a variable component agreed between them, on the basis of FOB value of the consignment exported outside India;

(iv) the entire flow chart for supply of goods facilitated through such specified person is as follows:

- He arrange customers for the applicant as a facilitator,
- Applicant receives purchase orders from the customers located outside India;
- Applicant issues tax invoice under their own name and export the goods on the basis of PO;
- Specified person raises monthly commission invoice on the applicant as per the terms and condition of the MOU dated 05.03.2021,
- Applicant makes payment of commission invoice to said specified person, after receipt of sale proceeds.

(v) the applicant has entered into one such agreement dated 05.03.2021 with a specified person namely Shri Bobby Kapoor, a resident of UAE, for the period 01.04.2021 to 31.03.2023.

9. Before deciding the issues in hand, we first go through the MOU submitted by the applicant in this regard. On perusal of MOU dated 05.03.2021, the relevant portions are summarized as under:

(a) The said MOU is signed between the applicant & Mr. Bobby Kapoor, a resident of UAE;

(b) The supplies shall be made only on receipt of confirmed purchase orders, facilitated by Mr. Bobby Kapoor;

(c) Mr. Bobby Kapoor has ample experience in providing intermediary services in international market and is expected to provide such services to represent the company before customers to be located by him in middle East and to provide product support, to arrange confirmed purchase orders, facilitate liquidation of bills raised by the applicant and to facilitate settlement of any concerns raised by the customers/company time to time

(d) Commission is the total of a fixed component @ 4000 UD \$ per month plus a variable component agreed between them, on the basis of FOB value of the consignment exported outside India;

(e) The payment of commission will be made on monthly basis based on receipt of sale proceed only;

(f) This understanding shall be effective for the period 01.04.2021 to 31.03.2023.

10. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed by taking the issues one by one:

10. 2 We find that Overseas Commission Agent is covered within the definition of the term 'intermediary' as provided under section 2(13) of the IGST Act, 2017

i) In this context, we find that section 2(13) of the IGST Act, 2017 provides that "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, wuch goods or services or both or securities on his own account

ii) On perusal of agreement dated 05.03.2021 (supra), we find that Mr Bobby Kapoor is engaged in providing Intermediary in the international market and the applicant wished to utilize his expertise to get confirmed purchase order from outside India and for that the applicant shall pay commission to Mr. Bobby Kapoor, as per the terms and condition of the MOU

iii) On perusal of documents viz invoices, journal voucher submitted by the applicant, we find that the applicant has raised the invoices in the name of the forign buyer in respect of goods exported and not in the name of Mr Bobby Kapoor and has paid the commission to Mr Bobby Kapoor, on agreed terms and condition.

iv) In terms of legal provisions, we observe that any person, who enables the supply of goods/services between two persons, is considered as intermediary. However, where a person is providing services or supplies of goods on his own account to his customers, It cannot be termed as ntermediary. As per the agreement dated 05.03.2021, Mr Bobby Kapoor, has to arrange or facilitate the supply of goods of the applicant to international Market and in return he shall get the commission on agreed terms.

v) Thus on perusal of legal provisions, agreement dated 05.03.2021 & other records submitted by the applicant in this regard, we observe that Mr Bobby Kapoor, a overseas commission agent, fall within the definition of 'intermediary' as provided under section (2)13 of the IGST Act, 2017.

10.3 As per facts & circumstances, services received by applicant from the Overseas Commission Agent falls within the meaning of the term 'import of services' means the supply of any services where-

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

li) On perusal of said legal provisions, we find that the services can be called as 'import of services' only when it is satisfied all the three conditions mentioned therein. On perusal of records, we find that the conditions (i) & (ii) are satisfied in as much as Mr Bobby Kapoor, supplier of service, is located within India. Now in respect of (iii) condition, we find that the section 13 of the IGST Act, 2017 specifically deals with place of supply of a service as to whether a service can be termed as import of service or otherwise. On perusal of section 13 of the IGST Act, 2017 is relevant to the issue in hand which provides that the place of supply of the intermediary services would be the location of the supplier of such services (i.e. location of intermediary service provider). Thus we find that the condition (iii) is not satisfied as the place of supply of service is not in India.

iii) Thus we observe that the services received by the applicant is out of the ambit of "import of services" in as much as the condition (iii), supra, is not satisfied in terms of section 13 8) ib) of IGST Act, 2017 as place of supply of service is out of India, since the location of Mr. Bobby Kapoor, is UAE, which is a place outside India.

10.4 The applicant is required to pay GST on RCM basis under section 5(3) of the IGST Act, 2017 on commission paid to the Overseas Commission Agent.

i) We find that as per section 7(4) of IGST Act, 2017, supply of services imported into the territory of India shall be treated to be supply of services in course of inter-state trade or commerce.

ii) On perusal of section 5 of the IGST Act, 2017, we find that the said section deals with levy and collection of tax i.e. IGST and section 5(3) of the IGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

iii) Thus on perusal of legal provisions, we find that 'import of services' shall be treated as inter-state supply of services and the same is chargeable to IGST under reverse charge i.e. service recipient located within Indian territory has to pay the tax. Since the transaction is related to an intermediary service which is out of the ambit of 'import of services' as discussed in foregoing paras, accordingly we observe that GST under reverse charge is not payable on the same.

11. In view of the discussions held above, we rule as under:

RULING

(i) Overseas Commission Agent is covered within the definition of the term 'intermediary*' as provided under section 2(13) of the IGST Act 2017-

(ii) Services received by applicant from the Overseas Commission Agent do not fall within the meaning of the term 'import of services*' as provided under section 2(11) of the IGST Act, 2017;

(iii) The applicant is not required to pay GST on RCM basis under section 5(3) of the IGST Act, 2017 on commission paid to the Overseas Commission Agent.

ANURAG MISHRA (MEMBER)	RAMESHVAR MEENA (MEMBER)
------------------------------	--------------------------------

(Please Note - Above is not an official Copy of AAR Order. Kindly download Official copy from official website of relevant Authority.)