

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI - 600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34

2. Tmt. K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

ORDER No.26/AAR/2022 DATED:30.06.2022

GSTIN Number, if any / User id		33AAHCN0274F1ZR
Legal Name of Applicant		NSK SHIP MANAGEMENT PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		477-482, Khivraj Complex-I, 3 rd Floor, Anna Salai, Chennai-600035
Details of Application		GST ARA- 01 Application Sl.No. 29/2021/ARA dated: 24.08.2021
Concerned Officer		Centre: Chennai North Commissionerate State: Nandanam Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in Brief)	The applicant is engaged in providing support services related to vessel management to its group company, New Shipping Kaisha Ltd (Japan)
Issue/s on which advance ruling required		Determination of liability to pay tax on any goods or services
Question(s) on which advance ruling is required		Whether the vessel support services provided by the applicant to its group company outside India qualify as " Export of services" under GST?

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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

NSK SHIP MANAGEMENT PRIVATE LIMITED, 447-482, Khivraj Complex-I, 3rd Floor, Anna Salai, Chennai-600035 (hereinafter called the Applicant or NSKI) are registered under GST with GSTIN33AAHCN0274F1ZR. The applicant has sought Advance Ruling on the following question:

Whether the vessel support services provided by the applicant to its group company outside India qualify as "Export of services" under GST?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are a Private Limited Company registered in India and is engaged in providing support services relating to vessel management to its group company, namely New Shipping Kaisha Ltd, Japan (hereinafter referred to as "NSKJ"), a company registered under the laws of Japan, for the vessels managed by NSKJ. NSKJ manages vessels which are carrying the country flag of Panama (7 vessels) and the British Cayman Islands (3 ships). These ships are foreign going vessels, and on a world-wide route. During their voyage, these ships can be stationed at various ports and seas around the world, and on occasions also call Indian ports. In this regard, NSKI has entered into a contract with NSKJ for providing various support services in relation to these vessels to NSKJ, either by itself or through various outsourced vendors, whether in or outside India. NSKI charges a fixed management fee of USD 7200/- per month per vessel for providing these support services to NSKJ. Further, in respect of some services provided by vendors to NSKJ,

the applicant acts as a pass through for payment to these vendors as and when received from NSKJ.

2.2 On interpretation of law, the applicant has stated that as per the provisions of Section 95 and 97 of the CGST Act, they are eligible to seek Advance Ruling on the issue raised in their application. The applicant has referred to Section 5 of IGST Act which levies IGST on all inter-state supplies of goods or services or both, except on the supply of Alcoholic liquor for human consumption on the value determined under Section 15 of the CGST Act and at such rates not exceeding 40% as may be notified by the Government on the recommendations of the council. They have also referred to definition of Zero rated supplies under Section 16(10) and Sec 16(3) for the ways to do such supply. The applicant has also referred to Clause (6), (14) and (15) of Section 2 of IGST Act which defines export of services, location of recipient of Services and location of supplier of services respectively. The applicant has also relied on Section 13, 13(2) and 13(3)(a) of IGST ACT to determine the place of supply of service where either location of supplier or recipient is outside India.

2.3 They have stated that details of nature of services, terms and conditions related to the contract including the scope of work, approvals, payment related terms etc., as agreed between NSKI and NSKJ are available in the Master Service Agreement (MSA). They have also stated that vide Section 1(a) of the MSA, NSKI has agreed to provide vessel management services to NSKJ in a manner and to the extent as specified in each statement of work (SOW). Further vide Section 1(b) and 1(c) of the MSA, NSKJ has agreed to pay NSKI the fee as set forth in each SOW and also agreed to reimburse NSKI for all reasonable out-of pocket expenses incurred in connection with provision of services, subject to approval by NSKJ. Section 8 of the MSA provides that NSKI shall render services as per the instructions of NSKJ and NSKJ shall have the right to remove/replace the staff members deployed by NSKI. Appendix A to the MSA, which stipulates the nature of services as agreed by NSKI to be provided to NSKJ which includes

- General administrative services/ administrative supervision for the vessels managed by NSKJ.
- Full technical operational and logistical support to vessels managed NSKJ as per the instructions of NSKJ.
- Payment services including making payments to vendors and other service providers, for vessels managed by NSKJ.
- Management of crew members

- Accounting, billing and collection services including preparation of MIS for vessels managed by NSKJ
- Legal and compliance services including liaison/ coordination with authorities of respective jurisdiction in relation to the vessels managed by NSKJ.

Further, the applicant has stated that the management fee charged by them can be categorized into the following scenarios.

- i. Management fee for the support services provided in relation to the foreign flag ships when outside India.
- ii. Management fee for the support services provided in relation to foreign flag vessels temporarily calling a port in India

2.4 Scenario:1 Management fee for the support services provided in relation to the foreign flag ships when outside India:

- The applicant has stated that in this scenario they are providing vessel support services in relation to foreign flag vessels outside India (say for example Singapore or sailing in the high seas).; that as per the definition of Supply under Section 7, the services provided by them qualify as Supply u/s 7 of the GST Act as the services are provided in the course of furtherance of business and made for consideration.;
- Further, as they are providing these services to its group company in Japan, their services in order to qualify as "Export of services" u/s 2 of IGST Act, each condition of the aforesaid section has to be fulfilled individually.
 - The first condition being location of supplier of services u/s 2(15), the applicant is located and registered in India, hence the condition is satisfied.
 - The Second condition in terms of Sec 2(14) of the IGST Act which defines 'location of recipient of services', the recipient NSKJ is located in Japan, outside India, hence the condition is satisfied.
 - The third condition being place of supply of service to be outside India. Section 13 of the IGST act determines the place of supply of services where either the location of supplier or the location of recipient is outside India. Section 13(3) (a) is relevant for the present submissions. It provides that in case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of supplier of services in order to provide the services, the place of supply of the said

services shall be the location where the services are actually performed. They have stated that the above inference is based on the provisions of the erstwhile Service Tax Law and CBEC's Education Guide on 'Taxation of Services' and that Section 13(3) of the IGST Act 2017, covers those services which are directly provided or applied on the goods like repair, reconditioning etc. which temporarily come into physical control or possession of the service provider, and without happening of which, the service cannot be rendered. In such cases, the place of provision of such services shall be the location where such services are actually performed. In the instant case, going by the nature of services as envisaged in the MSA, they are not directly doing or performing any work on the vessels. Rather, they are providing a bouquet of services of varied nature in order to provide support to such vessels. Further, services like administrative advisory support, accounting, payment related services, legal compliance and liasoning etc. does not require physical control of the goods, i.e. the services in question can and in fact, are being performed without having the actual possession of the goods. Also, the services are being supplied directly from its location in India by managing the affairs of vessels in terms of the agreement entered with NSKJ. As per the above cited explanation of the guidance note of educational guide, it is clear that Section 13(3)(a) shall not cover cases where supply of goods is not material for rendering the service. Hence, the gamut of services performed by the applicant are not specifically covered under Section 13(3)(a). Further, their case is also not covered by any of the other subsections of Section 13(3). Hence, it can be inferred that the place of supply of services provided by them shall be the location of the recipient in terms of the general provision as contained under Section 13(2) of the IGST Act. Accordingly, as per Section 13(2), the place of supply of services rendered by the Applicant will be Japan, which is a place outside India. The Applicant's view is that even if such vessel support services are covered under the purview of Section 13(3)(a) of the IGST Act which provides that place of supply shall be the place where such services are actually performed, the place of supply shall be the place outside India since the vessels in this case are outside India. Hence, the third condition also stands satisfied in the first scenario.

- o The fourth condition requires the payment of such service to be received by the supplier in convertible foreign exchange or Indian Rupees (where authorized by RBI). Pursuant to this, in the present case, the payment of such services has been received by the supplier of service i.e. the Applicant in convertible foreign exchange.
- o The fifth condition of "export of services" requires that the supplier of service i.e. the Applicant and the recipient of service i.e. NSKJ should not be mere establishments of a distinct person in accordance with explanation 1 to Section 8 of the IGST Act. In accordance with the explanation 1 to Section 8 of the IGST Act the NSKI and NSKJ are group companies and not mere establishments. They have relied on the decision of Hon'ble Gujarat High Court in Linde Engineering India Pvt Ltd vs Union of India cited at 2020-VIL-349-GUJ-ST, wherein the High Court held that services rendered by the petitioner company to its parent company would have to be considered "export of service". The above decision is squarely applicable to their case as the definitions and conditions of "export of Service" under erstwhile Service Tax laws and GST are para materia. They have also relied upon the Order in Appeal No.52/JC/Central Tax/ Appl-1/Delhi/2019 dated 09.03.2021 passed by the GST Appellate Authority in the case of M/s Transformative Learning Solutions Pvt Ltd, wherein the Appellate Authority upheld the appellants view that both the group companies are separate legal entities and can be said to be 'related persons' under GST law. In view of the above facts, the applicant has stated that NSKI and NSKJ being group companies do not fall under the ambit of mere establishments of a distinct person, thus, the last condition of Section 2(6) of IGST Act also stands satisfied in the first scenario of the applicant.
- Hence, the applicant has stated that as per the definition of zero-rated supplies under Section 16(1) of IGST Act, their services made under the first scenario will fall under zero-rated supplies in terms of Section 16(1) of IGST Act.

2.5 Scenario 2: Management fee for the support services provided in relation to foreign vessels calling at the port in India.:

- The applicant has stated that as explained in first scenario to qualify as "export of services" under Section 2(6) of the IGST Act, all conditions mentioned therein have to be fulfilled. They have stated that all the conditions specified in Section 2(6) of the IGST Act is satisfied in the second scenario, thus the service

rendered by applicant is zero rated supply in terms of Section 16(1) of IGST Act.

➤ The Applicant has stated that to determine the taxability of the supplies made by NSKI to NSKJ in the second scenario, it is imperative for the Authority to decide whether the same falls under "export of services" as prescribed under Section 2(6) of IGST Act or not. The applicant has relied upon the case law Sutherland Mortgage Services INC Vs Principal Commissioner cited at 2020-VIL-L02-KER, wherein the qualification of services as "export of services" under Section 2(6) of the IGST Act was in question. They have referred to the Hon'ble Kerala High court decision in the above case, wherein the Hon'ble High Court quashed the ruling of the Advance Authority on the grounds that the provision contained in Clause (e) of Section 97(2) viz. "determination of liability to pay tax on any goods or services or both" is in wide terms and the Authority is obliged to render answers to advance rulings sought on the said matter. The applicant has placed reliance on the following case laws to substantiate their contentions that the provisions related to determination of place of supply is requisite for determining the ultimate taxability of the supply of goods or services or both,:

- M/s Sterlite Technologies Ltd (2020-VIL-L50-AAR)
- M/s Maninder Singh (under the trade name Mideast Pipeline Products) [2020-VIL-282-AAR]
- M/s Midas Foods (P) Ltd (2020-VIL-284-AAR)

2.6 In view of the aforesaid facts, the applicant seeks the authority to clarify Whether the vessel support services provided by them to its group company outside India qualify as "Export of services" under GST.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 09.11.2021. CA. Vinay Chordia, the Authorised Representative (AR) appeared for the hearing and reiterated the written submissions. He invited the attention to the CBIC Circular No.08/2021 dated 20.09.2021 which clarifies issues relating to export of services-condition (v) Section 2(6) of the IGST Act. He stated that their supply is 'Export of Services', as per definition under Section 2(6) of IGST Act. He stated that the question raised is covered under Section 97(2)(e) of the GST Act. The AR was asked to give a

detailed write up on the nature of services provided; basis for charging; bills raised (Bill of Supply/ Export Invoices). He was also asked to furnish on the clarification sought in light of the circular referred by him. It was emphasized that place of supply is not under the ambit of Advance Ruling Authority. The AR was also asked to furnish as to how the claim for determination of the nature of service supplied as 'export of service' which depends on the place of supply is within the ambit of this authority. It was intimated that the admissibility shall be decided on receipt of the above particulars.

3.2 The applicant did not submit the details/documents called for during the aforesaid hearing. Hence a notice was issued on 14.12.2021 and again reminded on 05.01.2022 to submit the documents required in the hearing held on 09.11.2021.

3.3 In furtherance to the aforesaid notice, the applicant vide their letter dated 10.01.2022 (received on 28.01.2022) submitted the following:

➤ Clarification on export of service:

The applicant has stated that they have filed the application in order to clarify if the support services provided by them to their foreign parent company can be treated as "export of services", for which the supply has to satisfy the conditions specified in Section 2(6) of the IGST Act 2017. They have referred to CBIC Circular No.161/17/2021 GST dated 20.09.2021. & requested to validate the conclusion that the supply would be covered under "Export of Services"

- Nature of services: The applicant has submitted the details of various services undertaken by them
- Export Invoice for providing Management services for January 2021
- Regarding the place of supply the applicant has submitted the facts already submitted in the statement of facts given in their application for Advance Ruling.

4.1 The applicant was given another opportunity to be heard virtually on 03.02.2022. CA Vinay Chordia, the authorised representative (AR) appeared for the hearing virtually. He stated that the CBIC Circular No.08/2021 dated 20.09.2021 mentioned in the earlier record of hearing is not the one they referred to and the circular referred is circular No.161/17/2021-CGST dated 20.09.2021. He reiterated their earlier submissions. He stated that the vessels for which the service are rendered may be ported in India. The AR was asked whether the services are required onboard the ship i.e, when the ship is docked/high seas. The AR stated that the services are

rendered continuously to the vessel which is under journey both onboard and at boarding place. The applicant was asked to furnish a write up on

- i. as to how they charge for the services when place of supply is 'in India' and the basis of charging
- ii. their role in the provision of service-whether it is on the Principal to Principal basis/agent along with the situations/substantiating documents.

4.2 The applicant did not furnish the documents called for during the hearing held on 03.02.2022 & a letter was issued on 02.03.2022 to furnish the documents required in the hearing. The applicant vide their letter dated 07.03.2022 received on 15.03.2022 furnished that:

- They track the movement of the vessel through a software known as 'Navtracker' which facilitates them by tracking the entire voyage information of each vessel. In addition to that the Captains/Owner of each respective vessel will update a report known as 'Noon Report' every single day which contains the exact location of the vessel, the direction of movement etc. These reports will help the Management to know the exact moment when the vessels enter the Indian Territorial limit (12 nautical miles from the coasts of India). With the above mentioned information they are able to determine the total management & support fee which will be apportioned based on the number of days the vessel has been in Indian Territory and IGST is being collected and paid accordingly. The case has been explained in detailed with an example. They furnished invoice for the month of January 2022 i.e. both Export invoice and pro-rate tax invoice for the above mentioned period, GSTN reports for the month of January.
- With regard to provision of service they have informed that they are providing both kind of services to NSKJ (the recipient) i.e. on Principal-to-Principal basis and also on pure agent basis. The Principal-to-Principal basis service comprises of the management, logistical support services, crew management and other necessary technical services for which NSKI charges NSKJ a fixed sum of \$7800/- per vessel per month as management fee. Further, NSKI facilitates payment to third party vendors who provide services to NSKJ for their operations of the vessels on pure agent basis. For this NSKI receives a budgeted amount from NSKJ on monthly basis. Based on the instruction of NSKJ the payments to third party will be discharged for their services rendered on pure agent basis. At the end of the month any surplus amount available with NSKI will be transferred to NSKJ or carried forward to meet subsequent

month's operating expenses. The applicant also requested for another hearing to enable them to explain/furnish any other evidences.

5.1 The applicant was given another opportunity to be heard virtually on 29.04.2022. The Authorised representative (AR), Shri Vinay Chordia, CA appeared for the hearing virtually and reiterated the submissions already made. The CGST Member asked the AR as to what are the services rendered by them under the head legal/compliance services. The AR replied that they do drafting of agreements, putting in place the contract between NSK, Japan and vendors. The AR was asked to furnish details of services provided under the head Legal and compliance services along with place of supply of such service. Under the head compliance services, he said that they perform tracking of vessels, submitting MIS reports, documents submissions at the ports, submission of loading/unloading documents both within and outside India. With regard to the services rendered in the capacity of pure agent, the member called for a list of services rendered. The AR replied that they are providing payments to vendors, payment facilitation and identification of vendors. The Member asked the AR to submit specific details on such services and if they are rendered as a part of management services or against the budgeted payment received, if so the details of such services with the trail of accounting documents such as agreement, PO, Invoice raised by Vendor on NSKJ and the accounting of such activities in the books of NSKI.

5.2 The applicant was addressed on 18.05.2022 to furnish the documents called for during the Virtual Hearing. The applicant vide their letter dated 29.05.2022 furnished the following facts/ documents:

- Legal services provided by the applicant to NSKJ:

As per appendix A of the Master Service agreement, the applicant agrees to provide various support services to NSKJ which is in point no.6 of the MSA. The same is give below:

“6. Legal and compliance services including liaison/coordination with authorities of respective jurisdictions in relation to the vessels managed by NSKJ”

- The details of legal / compliance services provided by them includes drafting of agreements, facilitating NSKJ when entering in to contracts with vendors, obtaining various certificates such as Ship Equipment Certificate, Radio Certificate, Construction Certificate, etc., which are mandatory for vessels to sail in the international waters. The applicant will ensure the procedural requirement by making an application to the authorized certification

organisations through proper channel, once the application is made online the said authority will proceed with the inspections or audit and will certify the vessels appropriately. In the process of application, the applicant ensures that the vessel/container fulfil/satisfy all the conditions specified in the checklist/application. Further, it would facilitate the inspection authority to carry out their statutory function and issue the requisite certification required under the International Maritime Act/Law and such other laws applicable. The responsibility center to obtain the legal certification for vessels vests with the applicant.

- They furnished copies of the essential certificates provided by PANAMA MARITIME AUTHORITY and Class NK NIPPON KALJI KYOKAI to the vessels owned by NSKJ(ORIENTAL COSMOS IMO 9800049) for which applications were made by them.
- The process of pure agent services/reimbursement services provided by NSKI to NSKJ:
 - NSKI would calculate the budgeted operating expenses for all the vessels (for individual vessel and consolidated) managed by NSKJ and assisted by NSKI. The requisition of funds is placed to NSKJ
 - on receiving the request from the applicant, NSKJ would transfer the budgeted amount to bank account of NSKI
 - (NSKI maintains two bank accounts: Kotak Mahindra Bank account solely used for reimbursement purpose of the individual and collective vessels account; MUFG Bank account is used for collecting management/support services fee and to meet day to day affairs of the company)
 - NSKI would issue a receipt voucher for the amount received from NSKJ
 - The captain/crew members of the vessel would place various request for supply of materials or provision of services. The request would be sent to NSKJ for their approval. On approval the quotation would be requested from Identified or short listed vendors.
 - The vendors will send their quotations and the same will be sent for NSKJ approval, once the quotation is accepted, the applicant will issue purchase order to the vendor.
 - The vendor will deliver the required articles/goods or provision of services to the vessel. Once the operations are completed the vendor will raise invoice to NSKJ for payment with care of the NSKI. On approval

from NSKJ, NSKI will make payment to respected vendor from the budgeted payment received.

- At the end of the month, in case there is any amount remaining out of the budgeted amount received, the same will be either paid back to NSKJ or will be carried forward to meet the requirement of subsequent months as per the instructions of NSKJ.
- The applicant has furnished complete trail of particular transaction carried out during the month of February 2022 for the vessel Oriental Margerite (IMO: 9407201)

6.1 The central Jurisdictional authority who has administrative control over the applicant has furnished the following comments:

To qualify the service rendered by the taxpayer as “export of services” the conditions as envisaged in clause (6) to Section 2 of IGST Act 2017 should be fulfilled, which are given below:

- 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 of such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; 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:

In the instant case, the conditions specified in 1, ii, iv, and v are satisfied, whereas in respect of condition iii, which requires place of supply of service to be outside India, it is seen from the submissions of the applicant that M/s. New Shipping Kaisha Ltd., Japan manages vessels which are carrying the country flag of Panama (7 vessels) and the British Cayman Islands (3 ships) are foreign going vessels, and on a world-wide route. During their voyage, these ships can be stationed at various ports and seas around the world, and on occasions also call on Indian Ports. In this regard, M/s. NSK Ship Management Pvt. Ltd. has entered into a contract with M/s. New Shipping Kaisha Ltd., Japan for providing various support services in relation to these vessels to M/s. New Shipping Kaisha Ltd., Japan, either by itself or through various outsourced vendors, whether in or outside India. Section 13(3)(a) of IGST Act, 2017 provides that in case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to

a person acting on behalf of supplier of services in order to provide the services, the place of supply of the said services shall be the location where the services are actually performed. In the given case, the services are being performed on Indian Ports, i.e. Inside India. Hence, the criteria "the place of supply of service is outside India" is not satisfied and therefore such services cannot fall under "export of services" and the benefit of zero-rated supply cannot be given to the applicant. Hence, the services rendered by the applicant to NSKJ should not be considered as "export of services" as condition No.(iii) under clause (6) to Section 2 of IGST Act, 2017 is not satisfied and hence, the benefit of zero rated supply should not be given to them. However, only those services which are provided at the time when the vessels are outside India would qualify as export of services.

6.2 The State Jurisdictional authority has submitted that there are no pending proceedings in the applicant's case in their jurisdiction.

7.1 We have carefully considered the application, additional submissions made in pursuance of the virtual personal hearings and the remarks of the Jurisdictional Officers. The applicant seek clarification of whether the support services provided by them to their group company outside India qualify as "export of services" under GST. They have stated that they supply various support services to their Group Company, NSKJ in relation to the foreign ships trading worldwide and sometimes also calling India. They have stated that the services proposed relates only to the vessel under their Management. They have sought ruling on the following questions:

1. The taxability of the supply of support services provided in relation to foreign vessels calling at the dock of other Countries outside India
2. What if, the foreign vessels are calling at the port in India?

7.2 The admissibility of the above questions before this authority is *prima-facie* discussed. The applicant has sought clarification as to whether the services provided by them to the recipient, NSKJ amounts to 'Export of Service'. 'Export of Service' is defined under Section 2(6) of IGST Act, which is as below:

'Export of Services' means the supply of any service when,-

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

(iv) the payment for such service has received by the supplier of the 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;

Section 97(2) of the CGST Act / Tamil Nadu GST Act (TNGST) gives the scope of Advance Ruling Authority, i.e., the question on which the Advance Ruling can be sought. For ease of reference, the section is reproduced as under:

97 (2) The question on which the advance ruling is sought under this Act, shall be 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 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.

From the above, it is evident that 'advance ruling' are decisions on questions specified in sub-section 97(2) of the Act in relation to the **supply** of goods or services undertaken or proposed to be **undertaken by the applicant** seeking the same. In the case at hand, to determine whether the supply amounts to 'Export of Service', the 'Place of supply of service' is to be determined and 'Place of Supply' is not within the ambit of this authority as per Section 97(2) above. In this regard, the applicant has placed reliance on the ruling of Sutherland Mortgage Services Inc Vs. The Principal Commissioner and Others [2020(3)TMI 186], wherein the Kerala High Court has stated as follows:

21. A reading of clauses (a) to (g) of sub section (2) of Sec. 97 of the CGST Act would make it clear that 7 items are enumerated as per clauses (a) to (g) of sub section (2) of Sec. 97 and all those clauses other than clause (e) thereof, are in specific terms. Whereas clause (e) of sub section (2) of Sec. 97 of the CGST Act clearly mandates that the larger issue of "determination of liability to pay tax on any goods or services or both" would also come within the ambit of the questions to be raised and decided by the Advance Ruling Authority on which advance ruling could be sought and rendered under the said provisions. Whereas Clauses (a), (b), (c), (d), (f) & (g), ie. the clauses other than clause (e), are in specific "pigeon holes" and the provision as per clause (e) of sub section (2) of Sec. 97 is in wide terms and the Parliament has clearly mandated that the latter issue of

determination of liability to pay tax on any goods or services or both, should also be matters on which the applicant concerned could seek advance ruling from the Advance Ruling Authority on which the said authority is obliged to render answers thereto. The Parliament has made the said provision envisaging that in transactions in nature, where India is now a growing economy and has to make its substantial performance in economic growth and development not only domestic investments, but even foreign investments would also be heavily required and that host of tax laws has been subsumed into the overarching umbrella of the goods and sales tax regime introduced by the Parliament and the Parliament would have certainly taken cognizance of the fact and has intended that very often applicants would require clarity and precision about various aspects of taxation in the transactions and that there should be certainty and precision in those matters, so that the applicant concerned is given the right to seek advance ruling even in such a larger issue as the one as per clause (e) of Sec. 97(2) of the CGST Act, which deals with issue of determination of liability to pay tax on any goods or services or both.

Further, it is observed in the same decision, that

24. Before parting with this case, it has to be borne in mind that India is at the cusp of great global changes and there cannot be any two opinions for anyone, who cherishes the best interests for this country, that with extreme hard work and industry, we have to progress economically, socially and in all spheres of our life. It has been in the consistent policies of the various Governments, both at the Union level and at the levels of the States concerned, that foreign investments, apart from domestic investments, are also highly needed for our economy, subject to the regulatory framework projected by laws. In cases like this, a foreign entity like the principal company in this case, would like to have precision and certainty about tax liability so that they can accordingly modulate their future outlook and it goes without saying that the executive authorities concerned including the taxation authorities will have to take the correct perspective and in accordance with the legislative policy framed as per the wisdom of the Parliament and the State Legislatures to ensure that there is certainty and precision in taxation liability, etc. so that the domestic investors as well as foreign investors, will get more incentive to continue and increase their level of activities, for the overall better development and growth of our economy.

Following the above, it is seen that in the case at hand, to determine whether the activity is construed to have been undertaken in the taxable territory for the purposes of GST or otherwise, it becomes necessary to examine the 'Place of Supply of Service', based on which the liability to pay GST by the applicant on the said service can be arrived. Hence, applying the ratio of the above decision of Kerala High Court the Questions raised by the applicant is taken up for consideration on Merits.

8.1 The facts of the case as per the submissions of the applicant are that they are a Private Limited Company registered in India and is engaged in providing support services relating to vessel management of the vessels managed by its group company, New Shipping Kaisha Ltd, Japan, a company registered under the laws of Japan. NSKJ manages vessels which are carrying the country flag of Panama (7 vessels) and the British Cayman Islands (3 ships) and the applicant extends the support services to NSKJ in managing these vessels as per their contract with NSKJ, either by themselves or through various outsourced vendors, whether in or outside India. NSKI charges a fixed management fee of USD 7200/- per month per vessel for providing these support services to NSKJ. Further, in respect of some services provided by vendors to NSKJ, the applicant acts as a pass through for payment to these vendors as and when received from NSKJ.

8.2 On the scope of supporting services, it is stated that the nature of services extended are as follows:

Sl.No	Nature of Service	Description
1	Administration Service	Identification of suitable vendors, vendor finalisation, collation of quotation from various vendors, short listing of vendors, facilitating payment to vendors etc.
2	Human Resources	Appointment of appropriate staff on Board the vessel, payroll management, recruitment, termination and other services covering Human Resource Management
3	Technical operational services	Virtual Engineering consultancy, Marine Engineering Consultancy in case of any technical or operational issues and other similar services
4	Legal & Representative services	Appointment of accountants, lawyers, auditors any other professionals for various compliances.
5	Accounting, billing services	Book keeping services including, reconciliation and creditors management
6	Any other similar services	Any other services to the above specified services as and when required by NSKJ

They have further stated that the Technical operational services are extended on board the vessel remotely during its voyage or when the vessel is docked. The legal / compliance services provided by them includes drafting of agreements, facilitating NSKJ when entering into contracts with vendors, obtaining various certificates such as Ship Equipment Certificate, Radio Certificate, Construction Certificate, etc which are mandatory for vessels to sail in the International waters and would facilitation of the inspection authority to carry out their statutory function and issue the requisite certification required under the International Maritime Act/Law and such other laws applicable. Under the head compliance services, they perform tracking of vessels, submitting MIS reports, documents submissions at the ports, submission of loading/unloading documents both within and outside India. With regard to the services rendered in the capacity of pure agent, it is stated that they are providing payments to vendors, payment facilitation and identification of vendors, for which no separate charges are paid to them; it is stated that they have a separate bank account for receiving the payments due to the vendors from NSKJ, which is paid and settled month-wise; the current application seeks on the liability with regard only to the 'Management Fees' received by them and is not on as to whether the payment services rendered by them is in the capacity of 'Pure agent' and accordingly, the analysis of support services rendered for which the 'Management fees' are received by the applicant alone is taken up for consideration.

8.3 From the foregoing, it is evident that the applicant extends services which requires the physical presence of the vessel when inspections for certifications, docking, loading /unloading, repairs, etc are undertaken and also services of accounting, HR, procurements, etc which do not require the physical presence of the vessel. Further, it is seen that the applicant acts as 'pass through', i.e., identifies vendors, facilitates entering into agreements with such vendors, attend to payments for the services of these vendors to NSKJ, etc. The applicant is paid a consolidated 'Management Fees' as service charge for the above bouquet of supporting services extended by them as per their agreement. It is pertinent to note from the submissions that the applicant for the period the vessel stays in the Indian territorial waters, has calculated the pro-rata management fees and have raised GST for that portion of the Management fees as can be seen in the Tax Invoice No. 031/21-22 dated 02.01.2022. In the above factual position, the taxability of the supply provided when the foreign vessels calls at dock of (i) countries outside India; and (ii) at the port of India are examined.

9.1 The taxability of the supply can be arrived at depending on whether the supply amounts to export of services. 'Export of Service' is defined under Section 2(6) of the IGST Act, 2017 as follows:

(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 or in Indian rupees wherever permitted by the Reserve Bank of India ; 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;

In the case at hand, the applicant being the supplier of service is located in India; the recipient of service being a company registered in Japan is located outside India; the payment for the services is received in convertible foreign exchange as seen in the FIRC furnished for the Transaction Date 29/09/2020 furnished along with the application; the supplier and recipients are entities of the group company. Thus, the conditions to be examined are whether, the supplier and recipient of the service are not merely establishments of a distinct person & the 'Place of Supply' of service is outside India.

9.2 Explanation 1 in Section 8 of the IGST Act 2017 states as follows:

Explanation 1.-For the purposes of this Act, where a person has,-

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

CBIC vide Circular No. 161/17/2021-GST dated 20th September 2021, also relied on by the applicant, has clarified that

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would

not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8

In the present case, the applicant is a company incorporated under the laws of India and the service recipient group company, NSKJ is incorporated under the laws of Japan and therefore are separate persons and would not be considered as “merely establishments of distinct persons” and therefore condition (v) above is satisfied.

9.3 The next condition to be seen is the ‘Place of Supply of Services’, which are governed by Section 13 of IGST Act, 2017. The applicant in their submissions has stated that Section 13(3)(a) is relevant for the present submissions. It is the contention of the applicant that the above section covers those services which are directly provided or applied on the goods like repair, reconditioning etc which temporarily come into physical control or possession of the service provider whereas they are not directly doing or performing any work on the vessels but are providing a bouquet of services of varied nature in order to provide support to such vessels and are being performed without having actual possession and hence, are not specifically covered under Section 13(3)(a). They have further contended that their case is not covered by any other sub-sections of Section 13(3) and therefore in terms of the general provisions as contained in Section 13(2) of the Act, the place of supply rendered by them will be Japan, which is a place outside India.

9.4 The applicant supplies services, which he has classified under SAC 996759 as seen in the Export Invoice No. 030/21-22 dated 01.01.2022. SAC 996759 which is ‘Other supporting Services for water transport nowhere else classified’. Thus in the self-assessment era, considering that the applicant is not before us requiring the classification of the supply, it is evident that the services supplied as ‘Support services’ as per the agreement with NSKJ is in relation to water transport of the vessels under the maintenance of NSKJ. In extending such support service, it is stated by the applicant that they undertake various technical/operational services for the vessels either remotely or when docked; extend compliance to various statutory requirements regarding the operation of vessel; facilitate inspection; berthing of the vessel, loading and unloading. Thus, the bouquet of services rendered also includes those services which requires the physical possession of the vessel. Thus the “Place of Supply” of the service extended will be the place of availability of the vessel and not the place of service receiver, i.e., NSKJ, which is Japan as per Section 13(3)(a) of the act, which states as:

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

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Further, it is pertinent to note that Section 13(6) of the Act states as

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

From a joint reading of Section 13(3) and 13(6), it is clear that the statute prescribes the location in the taxable territory where any support services requiring the physical availability of the vessel under management is supplied, then the 'Place of Supply' is the location in the taxable territory in respect of that voyage of the vessel.

9.5 It is seen from the records that during the period of December 2021-January 2022 a particular vessel named "MT ORIENTAL TULIP" was engaged in a voyage. On 28th December 2021 the vessel called the port of Kandla, Gujarat, India for loading operations the vessel had departed on 2nd January 2022 leaving the territory of India for the rest of the month of January. The applicant based on the extract of report by Navtracker software which maintains the voyage route and other information about the vessel, has arrived at the taxable management fee of MT ORIENTAL TULIP for the month of January as follows:

Particulars	Amount (in \$)
Total Management fee of the vessel for the month of January 2022	=\$7800.00
Value of Supply which is considered as Export of services since the POS is Overseas (03.01.2022 to 31.01.2022)	=\$7800*28/30@=\$7280.00
Value of Supply which is considered as Taxable since the POS is Gujarat (01.01.2022 to 02.01.2022)	=\$7800*02/30=\$520.00
IGST paid on the above	=\$520*18%=\$94.00

They have accordingly raised Tax Invoice/Export Invoice as furnished before us. However, as per the provisions of Section 13(6) of the IGST Act discussed in Para 9.4 above, when services requiring the physical availability of the vessel is supplied in

taxable territory along with other non-taxable locations, the "Place of Supply" will be the "Location in the Taxable territory". Accordingly, in cases, when the vessel under management calls on the 'taxable territory', then the place of supply of service in respect of that vessel under management, is the location in the taxable territory and the services rendered in respect of that vessel is not covered under "Export of Service".

9.6 In cases where the vessels do not enter any of the location in the taxable territory and the entire services relating to water transport of the vessels are extended in locations outside the taxable territory then, in such cases, the services extended are "Export of Services"


10. In view of the foregoing discussions, we rule as under:

RULING

1. The vessel support services provided in relation to foreign vessels sailing to other countries outside India, falls under "Export of Services" as per Section 2(6) of the IGST Act as the "Place of Supply" in such cases is entirely "Outside India"
2. If such vessels are calling at the Port in India, then the Place of Supply in respect of that vessel is in India as per Section 13(6) of the IGST Act 2017 and the services rendered to that vessel is not 'Export of Service'.


Smt. K. LATHA
Member (SGST)




Shri T. G. VENKATESH
Member (CGST)

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// BY SPEED POST WITH ACK.DUE //

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