

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

(1) Shri. M. Rammohan Rao, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAFCI1758M1Z5
Legal Name of Applicant	M/s. IVL India Environmental R&D Private Limited
Registered Address/Address provided while obtaining user id	A-808 and 809 Shelton Sapphire, Sector 15 and CBD Belapur, Navi Mumbai, Maharashtra - 400614
Details of application	GST-ARA, Application No. 50 Dated 02.11.2020
Concerned officer	Division-I, Commissionerate-Belapur
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Determination of liability to pay tax
B Description (in brief)	That mere transfer of monetary proceeds by the applicant to IVL Swedish Environmental Research Institute Limited is not liable to reverse charge
Issue/s on which advance ruling required	<ul style="list-style-type: none">Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 50/2020-21/B- 108 Mumbai, dt. 01/12/2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 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" respectively] by **M/s. IVL India Environmental R&D Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

Whether mere transfer of monetary proceeds by the IVL India Environmental R&D PVT Ltd (hereinafter referred to as 'the Applicant' or "IVL India") to IVL Swedish Environmental Research Institute Limited (hereinafter referred to as "IVL Sweden"), without underlying import of service will be liable for payment of Integrated Goods and Service Tax under reverse charge mechanism under entry no. 1 of Notification 10/2017 – IGST (Rate) dated June 28, 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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

Background of the Applicant:

- 2.1 *IVL Sweden is a foreign company incorporated under the laws of Sweden and IVL India Environmental R&D Pvt Ltd. ('IVL India'/'The Applicant') is a company incorporated under the laws of India.*
- 2.2 *The Municipal Corporation of Greater Mumbai ("MCGM") had invited bids for contract of "Project Management Consultancy Services" for four locations which are Versova and Malad Influent Pumping Station under MSDP Stage -II, Mithi River Rejuvenation Project (Package I, II, III & IV), Bandra WWTF under MSDP Stage – II, Worli WWTF under MSDP Stage – II pursuant to which IVL Swedish Environmental Research Institute Limited (IVL Sweden) applied on the basis of their credentials, work experience and various certifications received from different government organizations as required in the bidding eligibility criteria.*
- 3.3 *IVL Sweden was successfully awarded the said tender for the following projects with the respective contract amounts (Refer attached LoAs):*

Location/Project Name	Contract Value
Versova and Malad	158,175,000
Mithi River	167,220,000
Worli	633,600,000
Bandra	541,530,000
Total	1,500,525,000

- 3.4 *However, as per the bidding eligibility criteria, the contract could only be executed by wholly owned subsidiary (WOS) of the foreign company which further construed that parent company in its capacity could not perform the contract directly. Hence, IVL Sweden incorporated IVL India in order to execute the said contract to obligate to the terms and conditions of the bidding eligibility criteria. MCGM issued the Letter of Award ('LoA') in the name of the 'IVL Sweden'.*
- 3.5 *Thereafter, the Applicant and IVL Sweden executed a contract with MCGM (hereinafter referred to as 'the MCGM contract') governing the scope of work, payment terms and general conditions of contract, which was signed complying the terms and conditions of the tender notice issued by MCGM in this regard.*

Key terms of the MCGM contract:

The key terms from the MCGM contract, relevant for the question(s) raised are as below:

A. Pre-contract works – Before awarding the DBO contract:



- Complete evaluation of the bids received by MCGM and recommendation and key issues.
- Assist MCGM in preparing the contract documents for the DBO work.

B. Post contract award – Project Management Consultancy:

- Conduct kick off meeting between MCGM, contractors as and when required.
- Scrutiny of successful contractors.

C. During construction stage:

- Consultant shall administer the contract.
- Review & ensure conformity of contractors securities in approved formats.
- Ensure requisite insurances have been received and they comply with the requirements of the contract.
- Detailed designs submitted by the contractors after award shall be checked & vetted by PMC.
- Review designs, drawings, item provisions & specification with respect to actual site conditions & suggest modifications, if required or deemed appropriate. If any realignment, redesign/modification, any additional design for completion of the project is required, it will be done by the Contractor under the guidance of PMC.
- PMC shall also review, vet and approve the construction, health and safety Programmes submitted by the contractor.
- Scrutinize the contractor's detailed work program, suggest modifications, if any, to the program after a careful study and ensure the contractor complies with the program; and the same shall be vetted and approved by PMC.
- Scrutinize and/or review contractor's superintendence, personnel and suggest modifications, if any;
- Scrutinize mobilization of the Contractor's Equipment to ensure the nominated plant & equipment is delivered to the site in accordance with the contractor's program and that permits where necessary, are obtained in a timely manner including testing of the equipment based on best international/national practices in conformity with Indian or international codes as specified in the contract;
- Scrutinize the construction methods proposed by the contractor for carrying out the works to ensure that these are satisfactory with particular reference to the technical requirements, project implementation schedule and environmental aspects as well as safety of works, personnel and the general public;
- Review compliance with the documentation and advance actions requirements, including all statutory clearances and permits or handing over of site.
- Scrutinize and approve the Contractor's working drawings based on survey setting out details, and drawings for temporary works, as required under the contract in consonance with The Employer's requirements; the working drawings are to be vetted by PMC and to be released to the contractor for execution.
- PMC shall also review and approve the time plan and the cost plan and identify any issues that may lead to additional cost or additional time which shall be informed in advance to the Employer for approval;



- To this effect, the PMC shall make the contractor to develop a risk matrix identifying the potential risks, probable mitigation measures and the owner of the risk and maintain the same for the entire project development period;
- PMC shall procure all the suitable latest project management softwares and server with all modules required for resource management & finance planning etc.
- Carry out day to day supervision of all works as per approved method statements of various activities of the work and ensure that the proper supervision is made;
- PMC shall monitor logistics plan submitted by the Contractor and also all of the Contractor's activities with goals of eliminating / minimizing adverse effects on public safety, traffic, residential and commercial activity, and the environment;
- PMC shall monitor, vet & approve the muck disposal plans submitted by the contractors.
- Supervise the Contractor's work in all matters including safety, compliances quality and care of the work including environmental aspects and labour welfare;
- Carry out inspection of contractor's equipment, plant, machinery, installations, etc. & ensure they are adequate & are in accordance with the terms and conditions of the contract;
- During construction stage detailed designs of the project components will be prepared by the Contractor and submitted to the PMCs for approval, check & vetting for GFC Certification. The robust design shall be in line with the Employer's Requirement. The construction will commence only on the receipt of "Good for Construction" certificate from the PMC.
- Review all concrete mix designs proposed by the contractors & approve/ suggest modifications, if any; in the mix design, laying methods, sampling, testing procedure, & quality control measures, to ensure required standard and consistency in quality during the commencement of work;
- Supervision and Contract Management (On Civil, Mechanical/ Electrical/ Instrumentation work etc.) including techno legal advice in connection with the work.
- Monitor closely and regularly the progress of work and advise the contractor about corrective measures and advise the client on progress of work at site on monthly basis.
- Maintain a day-to-day diary recording all events related to the works.
- PMC shall assist the Contractor for Coordination with various departments of the corporation, other Government Agencies for any works having bearing on the works under these services.
- Provide any or all of the supplementary services as per directions of the Employer;
- PMC shall forward one copy of all the correspondences made with the Contractor, any other agency to the Employer;
- Conducting / attending all review meetings related to the works as directed by Employer;
- Measure quantities of work, record measurements, and verify items/works quantities executed in the contractor's monthly statements;



- *PMC shall certify the Contractors payments as per the contract and submit the interim payment certificates to the Employer for the payment;*
- *Inspect the works on completion of each milestone. Accept the work as per contract and inform the Employer. Indicate any outstanding work to be carried out by the contractor before issuing a milestone certificate;*
- *Inspect the works on completion of the milestone for the whole of the Permanent Works, accept the works as per contract and inform the Employer;*
- *Attending local/international joint testing with contractor and the Employer as well as third party inspection agency for the works and supplies anywhere as per their source; all the expenses towards such inspection will be borne by the contractor.*
- *Review the test results/certificates of all construction materials and/or sources of materials and undertake additional tests as necessary to assess the quality of works;*
- *Maintain a permanent record of all tests carried out for monitoring the quality of works;*
- *Advise & recommend on variation, extra/excess items to Employer on regular basis, preparation of extra/excess/variation statement for the works as and when required;*
- *Scrutinize and approve contractor's proposal for temporary work, if any*
- *To assist the Employer for getting statutory permissions/clearances;*
- *Ensure compliance with statutory provisions under various applicable laws; ▪ Review & approval of Environmental Management Plan (EMP) submitted by the Contractor as per conditions of the contract & to monitor the compliances of Environmental Requirements as per MPCB/CPCB/Environmental Standards; ensure that the contractor implements the EMP;*
- *Operate a quantitative and qualitative project performance monitoring system (PPMS) as per the plan to be monitored and to evaluate the performance of the project in relation to its goals, purposes and outputs;*
- *Any cost for obtaining all environmental clearances, NOCs / approvals from State and Central Government Authorities and any other clearances that may be required by law during construction, execution and DLP shall be the responsibility of the contractor and the PMC shall assist the contractor for the same.*
- *Study of environmental clearance obtained by the Employer. If any impact is foreseen, guide the Employer in resolving the same.*
- *To assist the Contractor during the installation & commissioning which includes pre commissioning tests, Site Acceptance tests or any other tests required as per the Conditions of the Contract. All the tests are to be got approved by the PMC before commencement;*
- *Prepare, review, approve and recommend the Acceptance Certificates/ Completion Certificate/ Taking-Over Certificate to the Employer for issue of these certificates;*



- Determine deficiencies in works during DB and O&M period; prepare, approve and issue the final acceptance document to the Contractor;
- Review and approve 'as-built' drawings prepared by the contractor to be submitted to the Employer for issue;
- Conduct training of MCGM's personnel on O&M;
- It shall be mandatory on PMC to follow all the instructions given by Employer.

Minimum Qualifying condition

▪ Joint ventures & Sole Proprietary firms are not permitted. However, wholly owned subsidiary of the foreign company is eligible to quote based on credentials of its parent company/sister concern, if they submit certificate from the parent company/sister concern to that effect.

▪ **In case the firm qualifies on the basis of credentials of the Parent Company/sister concern, then the contract with MCGM is to be signed as per the following:**

- **By both subsidiary & Parent Company (if the bidder qualifies on the basis of Parent Company)**

- **By subsidiary, sister concern and parent company (if the bidder qualifies on the basis of sister concern)**

Invoicing and Payment terms

The Corporation shall not under any circumstances relax these terms of payment & will not consider any alternative terms of payment. Bidders should therefore, in their own interest note this provision, to avoid rejection of their bids. Currency of Payment shall be Indian Rupees only.

Requirement of different types of registrations in India

Payment of bills & other claims arising out of the contract will be made by ECS/RTGS/NEFT. The successful Bidder, therefore, will have to furnish information as regards the vendor No. Registered with MCGM. Vendor No. can be obtained by paying the requisite fees and giving necessary information such as PAN Card, Bank Details, Goods and Service Tax Registration etc. in the prescribed form available with MCGM.

Daily attendance report & worksheet report of Key as well as non-key staff shall be submitted to MCGM along with monthly bill.

Back Office Support Requirement

PMC shall have technical back office support to deliver the scope of work in stipulated time.

H. Governing Law

The Contract, and its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Indian Law.

Office for Consultant

MCGM will provide, office admeasuring 200 sq. feet at Mithi River Package I site. Electricity charges shall be borne by the Consultant and water will be provided by M.C.G.M. free of cost. This office will be available during project management consultancy and O & M period of the contract. During pre-PMC period, consultant



has to make their own arrangement of space either in Thane, Mumbai or Navi-Mumbai region.

Daily attendance report of key-staff shall be submitted along with the monthly bills. Man-days spent by each non-key staff shall be submitted monthly.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

Relevant Legal Provisions and Notifications:

In order to elucidate the levy of GST upon the instant transaction, reference shall be drawn to relevant statutory provision(s) and notification(s). Relevant portions/extracts of such provision(s) and notification(s) have been reproduced here under for ready reference:

1. The levy of tax under the GST regime comes from Section 9 of the Central Goods and Services Tax Act, 2017 ('CGST Act') upon all intra-states supplies and Section 5 of Integrated Goods and Services Act, 2017 ('IGST Act') upon all inter-state supplies.
2. It is imperative to note here that under Section 20 of the IGST Act, the specific provisions of CGST Act, such as scope of supply, time and value of supply etc. have been made applicable to IGST Act as well.
3. 'Service' is defined under Section 2(102) of the CGST Act as anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged; and the expression "services" includes facilitating or arranging transactions in securities;"
4. 'Import of service' is defined under Section 2(11) of the Integrated Goods and Service Tax Act, 2017 as the supply of any service, where— • The supplier of service is located outside India; • The recipient of service is located in India; & • The place of supply of service is in India;
5. Further, as per Sl. No. 1 of Notification no. 10/2017 – Integrated Tax (Rate) dated June 28, 2017, 'Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient', shall be paid by the person located in the taxable territory other than non-taxable online recipient under reverse charge mechanism.
6. Furthermore, Schedule I of the CGST Act, 2017, which talks about the activities to be treated as supply even if made without consideration, at para 4 provides as under – "4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business"
7. Further, Section 11 of the CGST Act confers power to the Government to exempt levy of tax on goods or services or both of any specified description, by virtue of a notification. The term 'exempt supply' has been defined under Section 2 (47) of the CGST Act to mean supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply".

B. Statement Containing Applicant's interpretation of law and/or facts, as the case may be, in respect of the questions(s):



1. The Applicant's interpretation of law with respect to questions raised above is as under:
2. In the instant case, IVL India is incorporated for the sake of satisfying the condition of MCGM. Further, IVL India does not receive any services from IVL Sweden and the activities undertaken by the IVL Sweden satisfy all of the aforesaid conditions as explained below:
 - IVL India was incorporated in India merely for the purpose of obtaining the contract from MCGM.
 - IVL India does not have necessary expertise to provide the 'Project Management Service' on its own capacity.
 - The aforesaid contract is awarded to IVL India, on the basis of credentials/expertise of the Parent Company. Thereby, as mandated by MCGM, both IVL India and the IVL Sweden have jointly signed the contract with MCGM.
3. Therefore, it is evident that IVL India is not receiving any services from IVL Sweden. IVL Sweden is providing services to the ultimate recipient i.e. MCGM through IVL India.
4. Hence, in the absence of the underlying service being provided by IVL Sweden to IVL India -
 - The question of paying IGST under reverse charge in the hands of IVL India does not arise;
 - The question of evaluating applicability of para 4 of Schedule 1 to the CGST Act does not arise.
5. The entire crux of the aforesaid transaction is triggered on account of fulfilling various conditions stipulated by MCGM. The fulfilment of the aforesaid conditions lead to creating an entity in India i.e. IVL India. MCGM was always aware that the actual service provider or in other words the person who has the expertise to provide 'Project Management Service' is IVL Sweden. IVL India was acting as a shadow of the IVL Sweden in providing the services to MCGM.
6. In light of the discussion, it is evident that services to MCGM is provided by IVL Sweden. However, to obligate with the terms and conditions of the bidding documents, eligibility criteria specified therein and various clauses of the General conditions to the contract, IVL Sweden had to, mandatorily incorporate an Indian entity.
7. Therefore, as the projects were granted to IVL Sweden on the credentials of IVL Sweden & the contract shall be executed by IVL Sweden either through IVL India or by executing a part of contract itself.
8. Below is the explanation to relevant clauses and conditions of the bidding documents, eligibility criteria & general conditions to the contract which proves that incorporation of an Indian entity was indispensable to execute this project and it would have been impossible for a foreign entity to execute this project without an Indian entity.
 - a. Eligibility criteria:

The e-tender notice, clearly specifies the bidding criteria and minimum qualification required for this project. One such criteria is that only the Wholly owned subsidiaries of the foreign company are eligible to execute for this project which means that the foreign company in its capacity can bid and execute this project through an Indian



entity. Hence, LOA has been issued in the name of the foreign company but it has been made a mandatory requirement in the LOA to incorporate an Indian entity to execute this project.

However, credentials and work experience of the foreign can be used since the ultimate service provider and the ultimate beneficiary of the project is the foreign company itself, in the instant case, IVL Sweden.

Further the contract has been signed by both parent as well as wholly owned subsidiary of the parent with MCGM i.e., the contract is a tri-partied contract.

b. Payment in INR only:

Since the Payment terms of the Contract has clearly mentioned that the 'currency of payment shall be Indian Rupees only', IVL Sweden had to incorporate IVL India in order to raise invoices in INR and receive the payments against the same in INR to be further remitted to IVL Sweden since majority of the work has to be done by IVL Sweden only.

c. Import License:

In the contract (clause 35), it is categorically mentioned that if any goods are required to be imported for smooth execution of the project, then IVL Sweden shall be solely responsible to import those goods, which is impossible for IVL Sweden since Import export license/code is only issued to Indian residents or establishments those are registered in India. Hence, IVL Sweden had to incorporate the Indian entity to mitigate the risk of delays if a requirement of any small spare would arise in future and the project can be smoothly executed.

d. Requirement of GSTIN:

The contract clearly mentions that PAN card, Bank details & GST number shall be provided to MCGM in order to get registered & obtain a Vendor code. Further, if IVL Sweden had to execute the project itself, it would not have been able to obtain this vendor code & execution of contract would have been impossible without obtaining this number. Hence, IVL Sweden had to incorporate IVL India in order to obtain GST number and further obtain the MCGM Vendor code number.

e. Back office support requirement:

As per clause i) Contract Administration under H) Miscellaneous activities of the general conditions of the contract, there is a specific requirement that the consultants should have a back office in Mumbai/Navi Mumbai and a site office at the site. It is also pertinent to note that only a wholly owned subsidiary of a foreign company can execute this project. Practically, IVL Sweden would have found it difficult to operate any office in India without being registered here since all the service providers of day to day utilities such as Landline service provider, Internet service provider, Water supplier, Electricity supplier, etc always requires that the establishment should be registered in India. Hence, IVL Sweden incorporated IVL India in order to have a properly functioning back office and site office thus leading to smooth execution of the project.

9. All the above connotations to the contract and explanations construe that IVL India has only been incorporated to meet the contractual obligations and without IVL Sweden's support, it would not have been possible for it to execute the contract.



10. It is also submitted that even after incorporation of IVL India by IVL Sweden, the entire obligation, performance, and responsibility shall still remain in the hands of IVL Sweden.
11. Applicant has also enumerated certain facts of the case which proves that IVL India is acting just on behalf of IVL Sweden because IVL Sweden can't execute the contract on its own due to a number of contractual terms and conditions in the contract.

a) Letter of Award (LoA) to IVL Sweden:

The LOA has been awarded to the Swedish Company since the actual consultant is IVL Sweden and all the work shall be executed by it, refer annexed LoA's.

This means that the actual consultant to this contract is IVL Sweden. Hence, the benefit of the exemption notification shall reach to IVL Sweden.

b) Specific requirement of incorporation of an Indian entity in the LoA:

In the Letter of Award, MCGM has specifically made it mandatory for IVL Sweden to incorporate a company under the Indian Companies act along with PAN, GST registration and other statutory details. Refer the requirement list in the annexed LoAs in **Appendix II**.

c) Credentials and work experience of IVL Sweden:

The bidding criteria in the bidding documents specifically mentions certain minimum criteria without which, the contract shall not be awarded. Below are the relevant clauses of the contract.

The contract to IVL Sweden has been awarded solely on the basis of the credentials and work experience of IVL Sweden.

This further reiterates the fact that the main consultant of this contract is IVL Sweden & not IVL India. Hence, the benefit of the exemption notification should also reach to IVL India.

d) BG by IVL Sweden:

As per the SI.No. 1 of clause 8 'Mode of Payment' of the bidding documents, the bidder is required to submit an advance bank guarantee of 10% to claim the advance payment. IVL Sweden furnished/submitted the advance bank guarantee to MCGM in order to fulfil the requirement and claim the advance payment. Although advance was paid to IVL India due to various other clauses, but guarantees were given by IVL Sweden which means that the ultimate responsibility of the performance of this contract shall remain with IVL Sweden.

This also construes that the main consultant to this contract is IVL Sweden.

e) Work to be performed by IVL Sweden:

The project has been granted on the credentials, work experience and various certifications from different organisations of IVL Sweden and hence, ultimate execution also lies with IVL Sweden, either by IVL India or by executing the part of contract itself.

Hence, the above fact means that the main consultant to this contract is IVL Sweden.

f) Ultimate beneficiary is IVL Sweden:



The entire obligation of the contract, performance of the contract and responsibility of the contract lies with IVL Sweden which means that the ultimate beneficiary of the contract and the consultant to MCGM is IVL Sweden. It is just to meet the obligations of the contract and the Bidding qualification that IVL Sweden had to incorporate an Indian entity.

12. Therefore, in the absence of supply of service from IVL Sweden to IVL India, any flow of money from IVL India to IVL Sweden shall not be subject to IGST under reverse charge.

13. Below are some of the rulings/case laws wherein the principles that the exemptions under GST should be seen as project/service centric and not assessee centric:

a) In the case of **Ballset Entertainment P. Ltd. Vs Commr. of Service Tax, Delhi**, reported at **2018 (10) G.S.T.L. 372 (Tri-Del.)**, tax exemption was granted to the sub-contractor on the ground that though the bills were raised on the contractor, the nature of services in the bills clearly mentioned as charges towards the ultimate service recipient (customer). It was concluded that a perusal of the bill made it amply clear that though the bills were raised on the contractor but services were rendered towards the customer. The relevant extract of the same has been reproduced hereunder for your reference:

“5. On the second issue regarding services provided for use by the international organization UNICEF, we note the lower authorities denied the exemption under Notification 16/2002-ST on the ground that the services were provided by the appellant to M/s Lintas India (P) Ltd. and not to UNICEF. Notification 16/2002-ST exempts all taxable services provided by any person to the United Nations or an international organization as declared by the Government. UNICEF is covered by the exemption notification. We have perused various bills raised by the appellant to receive the consideration for such services. **Though the bills were raised in the name of M/s Lintas India (P) Ltd., the nature of service is clearly mentioned as charges towards branding cost of three UNICEF Van, UNICEF Girl Star activities, cost of UNICEF Float Operational for 30 days, branding of Van for UNICEF. A perusal of these bills make it clear that the services are for UNICEF though the bill is raised through M/s Lintas India (P) Ltd. We find in such situation, denial of exemption under Notification 16/2002-ST will not be sustainable. Accordingly, the claim of the appellant is accepted for such exemption.**”

In present case IVL India is only performing their duty which is limited to raising the invoice to MCGM and collect payments of that invoice and pay back to the IVL Sweden. Hence, IVL India is not performing the contract, it is in fact, IVL Sweden who is performing the contract.

b) The Maharashtra appellate Authority for advance ruling for goods and services tax in the case of M/s Shree Construction 2019 (3) TMI 1567 - APPELLATE AUTHORITY FOR ADVANCE RULING MAHARASHTRA, has held that:

“There is no relevance for the provider or recipient of the services in this case. If the services fulfil the criteria of the activities/services having description



contained in the above item (v), then it is immaterial who is providing the services to whom”

- c) The authority of advance rulings in Karnataka Goods and service tax in the case of M/s QUATRO RAIL TECH SOLUTIONS LIMITED - 2019 (10) TMI 1134 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, has held that:

“There is no stipulation in the said entry that this contract must be executed to the railways but it is sufficient that it must be pertaining to Railways and the supplier and the recipient in each of the contract is immaterial. Hence, the subcontract work is covered under the entry 3(v) of the notification”

The authority has observed and ruled that it is the service pertaining to works of railways which has been given a relaxation in the tax rate and hence the benefit of exemption shall be extended in the entire chain of subcontractors.

- d) Further, the authority for advance rulings for the state of Uttarakhand while providing exemption from GST to a sub-contractor of the main contract pronounced as under:

“Therefore I observe that the purpose or object of the GST Council is to extend benefit to the last chain of said supply and reason for the same is to provide equal opportunities and equal level playing fields to business entities and avoid discrimination. This I am of the view that the recommendations made by the GST Council in this regard makes it clear that if GST rate on the work contract is 12% or 5% then sub-contractor is also liable to discharge his GST liability @ 12% or 5% as the case may be, Similarly if GST rate on the said work contract is exempted or 0%, then supply of service in the form of work contract by the sub-contractors will also come in the purview of exempted or 0%. Thus I observe that if the principal contractor is providing an exempt works contract service to Government in terms of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) and in such case if works contract is partially or wholly sub-contracted then the sub-contractors would also be exempted from payment of GST”

- e) The authority for advance rulings Maharashtra in the case of M/S. HITACHI POWER EUROPE GMBH - 2020 (7) TMI 79 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA has held that

5.6 The Project Office has its own employees and also some employees of the Head Office (Expat employees) who work in the Project Office in India, for whom all the employer’s obligation like Form 16 in accordance with Section 203 of the Income Tax Act, 1961 are done by the Project Office.

5.7 As per the provisions of the Companies Act, 2013, applicant is required to maintain its financial books of accounts in a manner which would reflect a true and fair view of the business of the Company in India. Thus, in order to keep record of the expenses of salary cost of Expat employees working from India, the Project Office makes an accounting entry in its financial books of accounts in India for the salary cost of the Expat employees even though the salary is paid by the Head Office. We also observe that the PAN and TAN has been allotted to the Project office in the name of the Head Office situated abroad, by the



Income Tax Authorities. Hence we find that a project office in an extension of the foreign Head Office, and as in the subject case shall carry on all activities relating and incidental to execution of the Project in India. Thus we find that the expat employees are employees of the employer i.e. the Head Office and since the Project Office is an extension of the Head Office, there is a relation of employer and employee between the Project Office and the expat employees.

5.9 For GST to be applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of Project Office for salary cost of Expat employees paid by the Head Office, such accounting entry should be seen as a supply of goods, services or both. Since we find that there is a relation of employer and employee between the Project Office and the expat employees, the provisions of Schedule III of the CGST Act comes into play in this case as per which services by an employee to the employer in the course of or in relation to his employment will not be considered as a supply and therefore will not attract GST.

14. Borrowing analogy from the above ruling, it is clear that:

- (i) That services are provided by IVL Sweden to the recipient directly pertaining to Municipal Corporation of Greater Mumbai only;
- (ii) IVL India is merely a conduit for payment of consideration by MCGM, since there was a condition in the contract to create an Indian entity by MCGM.
- (iii) IVL India is not involved in either providing of service or in any way, user or experience the service provided by the IVL Sweden;
- (iv) It is pertinent to note that the present arrangement of incorporating IVL India is akin to project office or liaison office, so as to fulfill the condition for obtaining the contract from MCGM. Accordingly, the analogy accorded in the ruling of M/S. HITACHI POWER EUROPE GMBH - 2020 (7) TMI 79 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA, Supra is unequivocally applies to the case at hand.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional officer has not made any submissions in the matter.

04. HEARING

4.1 Preliminary e-hearing in the matter was held and the Authorized representative of the Applicant, Shri. Badrinath N.R. (Advocate) and Rupali Deshmukh (Company Representative) were present. The concerned jurisdictional officer was absent. The Authorized representative made oral submission with respect to admission of their application.

4.2 The application was admitted and called for final e-hearing on 20.10.2022. The Authorized representative of the applicant, Shri. Balaji Grandhi, Learned Advocate and Shri. Varun Garg, Senior executive were present. The Jurisdictional officer was absent. Matter was heard.

05. OBSERVATIONS AND FINDINGS:



- 5.1 We have perused the records on file and gone through the facts of the case and the submissions, both written and oral, made by the applicant.
- 5.2.1 The applicant, M/s IVL India Environmental R&D Pvt Ltd., has submitted that it is a company incorporated under the laws of India and is also a wholly owned subsidiary of a foreign company incorporated under the laws of Sweden, namely, IVL Swedish Environmental Research Institute Limited (hereinafter referred to as "IVL Sweden").
- 5.2.2 As per their submissions "IVL Sweden" was successfully awarded the tender for 'Project Management Consultancy Services', by the Municipal Corporation of Greater Mumbai (MCGM), for projects at four locations in Mumbai as mentioned in the subject application. The tender was awarded on the basis of their credentials, work experience and various certifications received from different government organizations as required in the bidding eligibility criteria
- 5.2.3 Since as per the bidding eligibility criteria, the contract could only be executed by a wholly owned subsidiary (WOS) of IVL Sweden, the applicant company was incorporated in India in order to execute the said contract and MCGM issued the Letter of Award ('LoA') in the name of the 'IVL Sweden'.
- 5.2.4 The applicant has submitted that, alongwith IVL Sweden it has executed a contract (as required under the terms of the bidding criteria) with MCGM (hereinafter referred to as 'the MCGM contract') governing the scope of work, payment terms and general conditions of contract.
- 5.2.5 The applicant is transferring monetary proceeds to IVL Sweden and from the question raised we find that, the main issue is whether mere transfer of such monetary proceeds by the applicant IVL Sweden, without underlying import of service will be liable for payment of Integrated Goods and Service Tax under reverse charge mechanism under entry no. 1 of Notification 10/2017 – IGST (Rate) dated June 28, 2017. In other words the applicant is stating that no services are rendered by IVL Sweden to the applicant and therefore there is no import of service in this case.



5.3 From the submissions, made we find that as per the **Minimum Qualifying condition** (mentioned at para 2 D of the submissions), only wholly owned subsidiary (in this case, the applicant) of the foreign company was eligible to quote **based on the credentials of its parent company/sister concern**, if they submitted a certificate from the parent company/sister concern to that effect and in case the wholly owned subsidiary qualified on the basis of credentials of the Parent Company/sister concern, then the contract with MCGM was to be signed by both, the subsidiary as well as the Parent Company (if the bidder qualified on the basis of Parent Company). **Thus the applicant has submitted that it was eligible to quote for the tender/contract.**

However in para 8 of its submissions, the applicant has submitted that only the Wholly owned subsidiaries of the foreign company are eligible to execute for this project and the foreign company in its capacity can bid and execute this project through an Indian entity. Hence, LOA has been issued in the name of the foreign company.

There is a contradiction in the submissions made in as much as in para 2D it has been submitted that the applicant was eligible to quote for the tender/contract on the basis of the credentials of IVL Sweden whereas in para 8 a it has been made clear that it was IVL Sweden which has bid for the project and the applicant, as a wholly owned subsidiary, was only supposed to execute the project. We, therefore, observe that the IVL Sweden qualified for the tender/contract and was to execute the project through the applicant. Thus the applicant would execute the project only on the credentials and expertise of the IVL Sweden which would further imply that, without the transfer of the expertise by IVL to Sweden, the contract could not be performed. The application is silent as to how such expertise is transferred from IVL Sweden to the applicant without any supply of services or goods or both.

5.4 In para 9 of the submissions it has been stated that IVL India has only been incorporated to meet the contractual obligations and without IVL Sweden's support, it would not have been possible for it to execute the contract. The



importance of IVL Sweden is clearly underlined and stated by the applicant, who on its own can not provide service to MCGM.

- 5.5 In para 10 it has been submitted that even after incorporation of IVL India by IVL Sweden, the **entire obligation, performance, and responsibility shall still remain in the hands of IVL Sweden.**
- 5.6 The entire submissions made by the applicant points out to the fact that the ultimate responsibility of the performance of the contract shall remain with IVL Sweden. It has been submitted that the main consultant to this contract is IVL Sweden. The applicant has concluded by stating that : services are provided by IVL Sweden to the recipient directly pertaining to Municipal Corporation of Greater Mumbai only; IVL India is merely a conduit for payment of consideration by MCGM, since there was a condition in the contract to create an Indian entity by MCGM; India is not involved in either providing of service or in any way, user or experience the service provided by the IVL Sweden.
- 5.7 The applicant is itself making contradictory statements. On one hand it is stating that services are provided by IVL Sweden to MCGM directly with the applicant not being involved in providing the service in any way and, on the other hand as seen from their submissions made in para 2, it is clear that the applicant is rendering service which includes: ensuring that requisite insurances have been received and they comply with the requirements of the contract; checking and vetting of Detailed designs submitted by the contractors ; Scrutinize the contractor's detailed work program, suggest modifications, if any, to the program ; after a careful study and ensure the contractor complies with the program; and the same shall be vetted and approved by PMC; carry out day to day supervision of all works as per approved method ; supervise the Contractor's work in all matters including safety, compliances quality and care of the work including environmental aspects and labour welfare; Monitor closely and regularly the progress of work ; maintain a day-to-day diary recording all events related to the works; assist the Contractor for Coordination with various departments of the corporation, other Government



Agencies; Advise & recommend on variation, extra/excess items to Employer on regular basis ; Scrutinize and approve contractor's proposal for temporary work, if any ; assist the Employer for getting statutory permissions/clearances; etc.

5.8 Thus, from the submissions made by the applicant it is crystal clear that, the applicant is the one which is performing the service at the ground level and the entire support for such service is being provided by IVL Sweden who has obtained the contract on the basis of its own credentials and work experience and it is a fact that the applicant cannot provide the services under the contract without receiving support services from IVL Sweden.

5.9 In view of the above, we find that services are received by the applicant from IVL to further perform its services under the contract, for which monetary proceeds flow from the applicant to IVL Sweden.

5.10.1 As per Section 2(11) of the Integrated Goods and Service Tax Act, 2017, "Import of services" means the supply of any service, where: The supplier of service is located outside India; The recipient of service is located in India; and The place of supply of service is in India.

5.10.2 We find that in the subject case other than the service provided by the applicant to MCGM, there is a very definite service being provided by IVL Sweden, located outside India - on account of its experience, credentials and expertise - to the applicant, located in India that enables the applicant to perform under the contract. Further, there is no doubt that the services are being supplied in taxable territory i.e. in India.

Therefore, in view of Sr. No. 1 of Notification No. 10/2017 Integrated Tax (Rate) dated June 28, 2017, since *support services are being supplied by IVL Sweden, located in a non-taxable territory to the applicant* the whole of integrated tax leviable under section 5 of the Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services i.e. the applicant. Thus the applicant has to pay GST on the money proceeds which is being transferred to IVL Sweden.



5.11 The issues in the case laws referred by the applicant are not at all similar to the present issue at hand and we therefore find that none of the case laws cited by the applicant are relevant in the subject case and are therefore not considered.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question:- Whether mere transfer of monetary proceeds by the IVL India Environmental R&D PVT Ltd (hereinafter referred to as 'the Applicant' or "IVL India") to IVL Swedish Environmental Research Institute Limited (hereinafter referred to as "IVL Sweden"), without underlying import of service will be liable for payment of Integrated Goods and Service Tax under reverse charge mechanism under entry no. 1 of Notification 10/2017 – IGST (Rate) dated June 28, 2017.

Answer:- In view of the above discussions, the transfer of monetary proceeds by the Applicant IVL Sweden, will be liable for payment of Integrated Goods and Service Tax under reverse charge mechanism under Entry No. 1 of Notification 10/2017 – IGST (Rate) dated June 28, 2017.




M. RAMMOHAN RAO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

