

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 46 / 2022
Date: 02-12-2022**

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

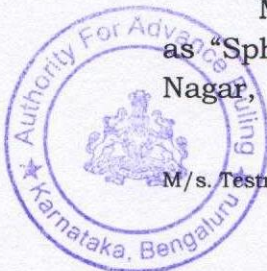
2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. TESTMESURES SPHEREA SOLUTIONS PRIVATE LIMITED, No.20, 4 th Floor, Vishnu Towers, 9 th Cross, ITI Layout, J.P. Nagar, 1 st Phase, Bengaluru-560 078.
2.	GSTIN or User ID	29AAGCT8942B1Z4
3.	Date of filing of Form GST ARA-01	29-04-2022
4.	Represented by	Shri Nikhil Jain, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Bengaluru South Commissionerate, Bengaluru South Division-6, Bengaluru (RANGE-DSD6)
6.	Jurisdictional Authority - State	ACCT, LGSTO-040, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs.5,000/- under KGST Act vide transfer of amount through FORM GST DRC-03 Reference No.DC2904220232147 Dated 20-04-2022

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s.Testmesures Spherea Solutions Private Limited (herein after referred to as "Spherea India"), No.20, 4th Floor, Vishnu Towers, 9th Cross, ITI Layout, J.P. Nagar, 1st Phase, Bengaluru-560078 (hereinafter referred to as 'The applicant'),



M/s. Testmesures Spherea Solutions Private Limited

having GSTIN 29AAGCT8942B1Z4 have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a Private Limited Company registered under the provisions of CGST/KGST Act 2017 and is a wholly owned subsidiary of Spherea Test & Services (herein after referred to as "Parent Company"). The parent company sold two equipment (Test benches for aeronautics cases) to their customer in India and the said equipment are currently with Indian Air Force at their operational forward basis. The parent company has subcontracted certain services to the applicant with respect to the test benches.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- i. *Whether the services provided by the company to its parent company relating to the test benches which are in the name of MRO services, be classified under heading "9987 i(a): Maintenance, Repair or Overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts"?*
- ii. *If the answer to the above is in affirmation, then whether the Place of supply is the "location of the recipient" as per the Notification No.02/2020-Integrated Tax dated 26th March 2020 which is the location of the Parent Company (Outside India) and that can be construed as exports of services?*
- iii. *If the answer to the first question is in negation, then we would like to know the classification of the services provided to the parent company and can it be considered as exports of services?*

4. Admissibility of the application: The questions are related to "classification of any goods or services or both" and "applicability of a notification issued under the provisions of this Act" and hence is admissible under Section 97(2) (a) and Section 97(2)(b) of the CGST Act 2017.

5. BRIEF FACTS OF THE CASE: The applicant furnished the following facts, relevant to the issue:

5.1 The applicant stated that they are wholly owned subsidiary of Spherea Test & Services (herein after referred to as "Parent Company"). The Parent Company has entered into an agreement to provide a set of services to a customer in France who in turn has agreed to provide such services to a customer in India. Further, the Parent Company has subcontracted those works to Spherea India.



5.2 The applicant stated that two equipments (test benches for aeronautics cases) are sold by the Parent Company to their customer in India. These test benches are currently with Indian Air Force at their operational forward bases.

5.3 The applicant stated that these test benches are used to test and prove the airworthiness of the aircraft's equipment. Also, on detection of any errors, the test benches are used for determination and correction of the errors which will ensure the safe flight of these aircraft. In this regard, Spherea India shall provide a set of services with respect to the test benches which are as below:

- i. Write incident reports on the Test benches.
- ii. Support customers to investigate problems appearing in Test benches, perform periodic verifications, maintenance of test benches.
- iii. Install new software on the test benches.
- iv. Assist customers in daily operation of test benches, analyse the test results reports.
- v. Provide advices to the customer.
- vi. Generation of monthly report, activities summary, set up and manage meetings based on these reports.

5.4 Spherea India, for the set of activities performed, shall raise invoice to its parent company for the activities performed as above since Spherea India does not have direct contract with the Indian customer. The company has entered into an agreement (sub contract of the work) for provision of services to its parent company. Payment against such invoices shall be received from the parent company in foreign currency as well.

6. Applicant's Interpretation of Law:

6.1 The applicant contended that the above set of activities are categorized as Maintenance, Repairs and Overhaul (MRO). The place of supply of MRO services shall be the location of recipient of services as per the notification No.02/2020-Integrated Tax dated 26th March 2020.

6.2 The applicant further stated that the section 2(14) of IGST Act lays down the definition of "location of recipient". Accordingly, the clause (b) reads as "*.....where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment*" is the current situation in the Company.

6.3 The applicant submits that the parent company is outside India and hence the registration is not obtained. Consequently, the place of supply shall be outside India if the services are covered under clause (b) of the Section 2(14) of the IGST Act and the services shall be treated as Zero-rated supply.



PERSONAL HEARING / PROCEEDINGS HELD ON 18-08-2022

7. Sri Nikhil Jain, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 18-08-2022 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. The Applicant, a wholly owned subsidiary of M/s Spherea Test Services, a joint stock company of France (herein after referred to as Parent company). The Parent Company sold two equipments i.e test benches for aeronautics cases are to their customer in India and these test benches are currently with Indian Air Force (IAF) at their operational forward bases. These test benches are used to test and prove the airworthiness of the aircraft's equipment. The test benches also, on detection of any errors, are used for determination and correction of the errors which will ensure the safe flight of these aircraft.

11. The parent company has entered into an agreement to provide a set of services with a customer in France, who in turn has entered into an agreement to provide such set of services to a customer in India. Thus the parent company has subcontracted the following services to the Applicant i.e Spherea India with respect to the test benches.

- i. *Write incident reports on the Test benches.*
- ii. *Support customers to investigate problems appearing in Test benches, perform periodic verifications, maintenance of test benches.*
- iii. *Install new software on the test benches.*
- iv. *Assist customers in daily operation of test benches, analyse the test results reports.*

Provide advices to the customer.



vi. *Generation of monthly report, activities summary, set up and manage meetings based on these reports.*

12. The Applicant have to provide the aforesaid services at the end customer's site(IAF) and shall raise invoice to its parent company as they do not have direct contract with the Indian customer (IAF) and the payment against such invoices shall be received from the parent company in foreign currency as well.

13. In view of the above, the Applicant sought advance ruling in respect of the questions mentioned at para 3 supra which are centered around the classification of their services and the applicability of entry Sl.no. 25 (ia) of the Notification 11/2017 Central Tax (Rate) dtd 26.06.2017, as amended. The applicant claimed that their activities are covered under MRO services and are classifiable under SAC 9987 and is exigible to GST @ 5% in terms of entry No.25 (ia) of Notification No.11/2017-Central Tax(Rate) dated 26.06.2017, as amended.

14. We proceed to examine the nature of the services of the applicant and their classification. In this regard we invite reference to the agreement entered by the applicant with their parent company. As per the agreement, the Parent Company is a provider of **test solutions** notably in the field of aircrafts / avionics and they have delivered a test solution on two sites (MOB1 & MOB2) of Indian customers.

15. Article 1 of the agreement defines certain terms for the purpose of the said agreement and some of the relevant terms are as under:

MERMOZ System : Designates the Automatic Test Equipment(ATE) aimed at testing Line Replaceable Units (LRU) and repairing with the use of Test Program Sets (TPS) and is composed of the System Hardware, the System Software and the related documentation.

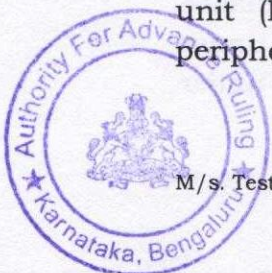
Incident : Malfunction which prevents end user from using its MERMOZ system(s) and / or TPS (s) as described in the Technical Specifications or, when applicable, as described in the relevant documentation.

Line Replaceable Unit (LRU) : designates the unit which is designated by the plan for maintenance to be removed from a higher assembly (aircraft/system) in the latter operational environment.

LRU P/N (Line Replaceable Unit Part Number) : A unique set of numbers identifying an LRU.

MRO's activities : designates the support and maintenance, repair and overhaul services related to the MERMOZ System and TPS described in Exhibit A hereunder, which are defined in Articles 2 and 6 of the agreement.

System Hardware : designates the set of supplies forming the hardware of the MERMOZ System and made of measurement devices, signal generators, a switching unit (link to LRUs), a test control computer (for process control), and its peripherals.



System Software : designates the set of operating software allowing the MERMOZ System to run Test Program Sets (TPS) and ensuring the MERMOZ system's self-test.

Test Program : designates the software program which implements the tests, test methods and test sequences to be performed on a unit to verify the compliance with its Test Specification with or without fault diagnosis and designed for execution on MERMOZ system.

16. Article 2 of the agreement deals with the scope of the agreement and Articles 6 with the scope of MRO's supply which is explained in exhibit A i.e. Statement of Work and para 4 thereof gives general description of the services to be provided. It is evident from the said description of services that the impugned services are clearly with regard to MERMOZ System, the operation of the bench and the EP (implementation and maintenance). The technicians of the parent company may participate in some tests of equipment on the bench with the customer. In the event of a malfunction, the technicians will have to investigate to identify the root of the problem and initiate a Technical Fact follow-up sheet (Supply [F1]) to inform Dassault Aviation as well as to the parent company for processing. It is pertinent to mention here that that the solution research activity is not the subject of the contract, as it is outside the scope of technician's activity.

17. Further, the technicians on receipt of the solution to the 'Technical Fact', implement the said solution and restart the procedure during which the malfunction appeared. The technicians close the 'Technical Event' if the problem disappears. The technicians run the EP entirely on the appropriate equipment of the Indian Customer to verify its proper functioning.

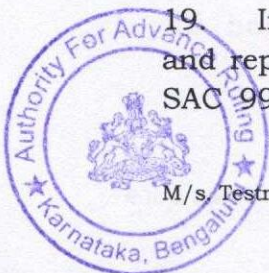
18. In view of the above, it is clearly evident that the contract is for Maintenance and Repair of MERMOZ system which is used for testing the air worthiness of the aircraft. Therefore the impugned services are relevant to maintenance and repair services of instruments for testing airworthiness of an aircraft. In this regard we invite reference to the Explanatory Notes to the Scheme of Classification of Services. The relevant SAC codes are as under:

9987 : *Maintenance, repair and installation (except construction) services*

99871 : *Maintenance and repair services of fabricated metal products, machinery and equipment*

998719 : *Maintenance and repair services of other machinery and equipment. This service code includes maintenance and repair services of, instruments and apparatus for measuring, checking, testing and navigating and other purposes such as aircraft engine instruments.*

19. In view of the above, the impugned services are covered under maintenance and repair services of other machinery and equipment and are classifiable under SAC 998719. The applicant contends that their services are classifiable under



9987 as “Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts” and hence are taxable to GST @ 5%, in terms of entry No.25 (ia) of Notification No.11/2017 -Central Tax(Rate), dated: 26.06.2017 which is inserted vide Notification No.02/2020 -Central Tax (Rate), dated: 26.03.2020. Now we proceed to examine whether the said entry is applicable to the instant case or not, for which we invite reference to the said entry, which is as under:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
25	Heading 9987	(i)----- (ia) Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts.	2.5	-

From the above it is observed that the entry at Sl.No. 25(ia) and concessional rate of GST of 5% is applicable to only *Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts*. In the instant case the applicant is providing maintenance and repair services of test bench equipment (Mermoz system) which are used for testing air worthiness of an aircraft. The said equipment does not qualify to be an aircraft or as an aircraft engine. To be termed as ‘other aircraft components or parts’, it should form a constituent piece or ingredient that is used to build an aircraft, which is not the case here. The test bench equipment (Mermoz system) neither forms part of aircraft nor forms a component of aircraft and therefore the said entry at Sl.no.25 (ia) of Notification No.11/2017-Central Tax(Rate), dated: 26.06.2017 as amended vide Notification No.02/2020-Central Tax (Rate), dated: 26.03.2020 and the concessional rate of GST of 5% is not applicable.

20. Now, we proceed to examine the second question which is subject to the affirmative answer to the first question. As the first question is answered in negative, this question becomes redundant and no ruling is offered in this regard.

21. The third question which is subject to the answer of first question in negative. We proceed to examine the third question as the first question is answered in negative. The third question has two components (i) as to what is the classification of services provided to the parent company and (ii) whether it can be considered as export of service. The classification of the impugned services is answered in paras 18 and 19 supra, as maintenance and repair services of other machinery and equipment under SAC 998719. The second portion to be answered is whether the impugned services amount to export of services or not. In this regard we invite reference to the definition of “export of services” given in Section 2(6) of the IGST Act 2017.



Section 2. Definitions.-

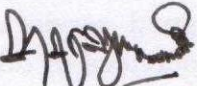
- (6) "export of services" means the supply of any service when,-
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange 1 [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;

22. From the above it is evident that the place of supply needs to be determined to decide whether the impugned supply of services by the applicant amounts to export of services or not. The determination of place of supply is beyond the jurisdiction of this authority and we don't intend to discuss the other issues / points of the definition. Thus the second portion of third question can't be answered.

23. In view of the foregoing, we pass the following

R U L I N G

- i. *The services provided by the Applicant to its parent company relating to the test benches are not classifiable under 'Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts' and hence not covered under Sl.no. 25 (ia) of the Notification No.11/2017-Central Tax (Rate), dated: 26.06.2017, as amended.*
- ii. *No Advance ruling is given on this issue as the first question is answered in negative.*
- iii. *The classification of services provided to parent company is 'maintenance and repair services of other machinery and equipment' under SAC 998719. On the question as to whether it can be considered as export of services, ruling cannot be given as it involves the determination of place of supply, which is outside the jurisdiction of this Authority.*


(Dr. M.P. Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru
Bengaluru - 560 009
Date: 02-12-2022


(Kiran Reddy T)

Member
MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Taxes, Bengaluru South GST Commissionerate, South Division-6, RANGE-DSD6, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-040, Bengaluru.
5. Office Folder.

