

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR
GOODS AND SERVICES TAX**

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/16/2022-23

Date- 20.01.2023

BEFORE THE BENCH OF

(1) Dr. D.K. Srinivas, MEMBER (Central Tax)

(2) Shri. Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Precision Camshafts Limited, D-5, D-6, D-7, D-7/1, MIDC, Chincholi, Solapur -55
GSTIN Number:	27AABCP1086B1ZS
Clause(s) of Section 97, under which the question(s) raised:	Section 97 (a) and (e).
Date of Personal Hearing:	25.11.2022
Present for the Appellant:	(i) Shri. Ankit Sachdeva, Advocate.
Details of appeal:	Appeal No. MAH/GST-AAAR/02/2022-23 dated 27.04.2022 against Advance Ruling No. GST-ARA-22/2020-21/B-36 dated 29.03.2022.
Jurisdictional Officer:	Deputy Commissioner of State Tax (SOL-VAT-E-002), Solapur Division.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. 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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "CGST Act" and "MGST Act"] by M/s. Precision Camshafts Limited, situated at D-5, D-6, D-7, D-7/1, MIDC, Chincholi, Solapur -413 255, ("hereinafter referred to as "Appellant or PCL") against the Advance Ruling No. GST-ARA-22/2020-21/B-36 dated 29.03.2022,

BRIEF FACTS OF THE CASE

- 3.1 Precision Camshafts Limited (the 'Appellant' or 'PCL') is engaged in the business of manufacturing camshafts. Camshafts are a rotating shaft mounted in a 4-stroke engine. The Appellant sells these manufactured camshafts to domestic as well as overseas customers. The overseas customers may be original equipment manufacturers ("OEM's") and use the camshafts for manufacturing engines such as Ford, General Motors do Brasil LTDA etc. or maybe machinist such as Musashi who would further supply the same to OEMs ("Machinist")
- 3.2 The camshaft is used for manufacturing engines and contributes in controlling engine power, emissions and fuel consumption. The camshafts are critical components as a small amount of error or misalignment will either result in leakage of fuel through the exhaust route or insufficient power stroke. So, each camshaft is unique and made as per precise specification of respective engine.

Transaction details

- 3.3 The OEMs/ Machinists place orders for manufacturing camshafts on Appellant, which are physically sent outside India. Since such supplies qualify as export of goods under Goods and Services Tax ("GST") laws, the same qualify to be a zero-rated supply. The Appellant at present is availing the benefit of such zero rating by exporting the said camshafts after duly complying with the procedural compliances such submitting Letter of Undertaking. The Appellant has filed refund applications for seeking refund of the GST paid on its procurements and the same has been granted by the tax authorities.
- 3.4 Given that each camshaft is being manufactured for use in a specific model of a vehicle, it is integral that the camshaft conforms to the specifications of the said model. Accordingly, for the purpose of manufacture of the camshafts, Appellant needs patterns and tools to manufacture camshafts according to the specifications of the OEMs/ Machinists.

The supply of the patterns and tools to Appellant for manufacture of camshafts is the obligation of the overseas OEMs/ Machinists. However, for operational efficiency and logistic convenience, it is standard industry practice that the tools are made in India and supplied to the manufacturers (such as the Appellant).

- 3.5 The Appellant themselves undertake the designing and process planning for development of tools, which constitutes for the majority of supply. However, the Appellant hires third party vendor for machining the tools as per the specification provided by the Appellant. Machining is a process in which a metal is cut to a desired final shape and size by a controlled material-

removal process. The Appellant hereafter employs a third party vendor for performing desired services.

- 3.6 Accordingly, the OEMs/Machinist outsource the following tasks to the Appellant:
- a) Assistance in designing and process planning for the manufacture of the tools
 - b) Identify and appoint a third party vendor to manufacture such tools as per the approved specifications
 - c) Coordinate with such third party vendors for manufacture of tools as per the approved specifications

Step wise process flow

- 3.7 A step wise process flow of the end to end activity, undertaken by the Appellant is as under:
- OEM/Machinist sends a request for quotation to the Appellant's marketing team.
 - The marketing team hands over the drawing to the Appellant's cross functional team which consists of experienced people / head of departments of various departments such as development, production quality, purchase and sales department who have thorough knowledge of camshaft manufacturing and workability of a design.
 - The cross functional team conducts a feasibility study on the design. Based on their study, a feasibility report is prepared to analyse if there is any abnormal requirement of OEM/Machinist in the drawing provided.
 - Once the cross functional team declare the drawing to be feasible for the manufacture of camshaft, marketing team prepares the techno-commercial offer and shares it with the OEM/Machinist.
 - After submission of the techno-commercial offer, detailed discussions take place between the Appellant and OEM/Machinist. Once, consensus is reached, techno commercial agreements are executed and the OEM/Machinist releases the purchase order for tooling, purchase or prototype etc.
 - Post raising of such purchase order, the Appellant undertakes the manufacturing process planning, designing and development of the camshaft. It is noteworthy that the Appellant's scope of work also includes contract review for OEM/Machinist specific requirements and tooling procurements.
 - The tooling procurement and internal validation is undertaken by the Appellant. In this regard, the following activities are undertaken by the Appellant:
 - Tools designing–Appellant's development and tooling team prepares the required tooling design / drawings / sketches etc.
 - Tool Procurement–The tooling design data along with purchase requisition is forwarded to the purchase department for further procurements process.

- Purchase team works with the third party approved vendor/s for manufacturing of the tools as per the tooling design.
- Once the tools are manufactured, the tools are thoroughly inspected to confirm if all tools are as per the specifications.
- Once these are found to be as per specifications, the Appellant conducts a physical internal validation by manufacturing camshafts and confirms if the camshaft is as per the data / specifications shared by OEMs/ Machinists in the request for quotation.
- After successful internal validation, the Appellant, starts working on manufacturing of the prototype / pilot lot of camshafts in accordance with the purchase order released by OEMs/ Machinists and ships it to the respective OEM/Machinist.
- Based on the approval obtained from the OEM/Machinist, Appellant starts manufacturing prototypes and ships it to OEMs / Machinists for testing purposes. Once the OEM/Machinist approves the lot, Appellant raises tooling invoice.

Basis the approval of the prototypes, Appellant starts manufacturing and supplies serial production camshafts according to customer's weekly, fortnightly or monthly schedule.

- 3.8 The purchase order for tooling is raised in addition to and separate from the purchase order that is being raised on the Appellant for supply of camshafts. Therefore, in essence the overseas OEMs / Machinists place two orders on Appellant – (i) for supply of camshafts; and (ii) for assistance in designing and development of patterns and tools to manufacture the camshafts.
- 3.9 Once the tools are developed, Appellant raises its invoice for the assistance in design and development charges of patterns and tools on the overseas OEM/ Machinist.
- 3.10 The overseas OEMs / Machinists pay the consideration for assistance in manufacturing process planning (including designing and development of prototype) in foreign currency to Appellant. The ownership of tools lies with the OEMs / Machinists and, due to unique character of the tools, they can only be used to manufacture the goods of the OEMs / Machinists who are the owner of such tools.
- 3.11 Therefore, Appellant in the present case, have two output activities (a) Supply of finished goods i.e. camshafts and (b) assistance in designing and development of patterns and tools used for manufacture of camshaft which are being provided by the Appellant to the OEMs/Machinist contractually on principle to principle basis.
- 3.12 With respect to the second activity i.e. "Assistance in design and development of patterns used for manufacture of camshaft" ("**Subject Transaction**"), the Appellant is engaged in a composite supply of the following:
- a. Provision of the designs/drawing of patterns and tools used for manufacture of camshafts

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- b. Identifying third party who can manufacture the patterns and tools as per the design / drawings.
 - c. Explaining and closely working with third party manufacturer to develop the patterns and tools to manufacture prototype / serial production camshafts
 - d. Engaging the third party manufacturers for supply of tools
 - e. Overall assistance to overseas OEMs / machinists in relation to provision of tools to Appellant itself.

- 3.13 In light of the above, Appellant filed an application dated 07.09.2020 (“**Impugned Application**”) before the MAAR on the following questions:
“Whether the supply of “assistance in design and development of patterns used for manufacture or camshaft” to a customer is a composite supply of services, the principal supply being supply of services?”
- 3.14 Upon considering the submissions made by both the parties, the MAAR vide order No. GST-ARA-22/2020-20/B-36 dated 29.03.2022 (“**Impugned Order**”) held that:
“The activity of design and development of patterns used for manufacturing of camshaft for a customer is a supply of service in the form of intermediary service.”
4. Therefore, being aggrieved of the Impugned Order passed by MAAR dated 29.03.2022, the present appeal is being filed before MAAAR, on basis of following the grounds.

GROUND OF APPEAL

A. THE ACTIVITIES UNDERTAKEN BY APPELLANT CONSITUTES A COMPOSITE SUPPLY WITH SUPPLY OF SERVICES BEING PRINCIPAL SUPPLY

- 5.1 In terms of Section 7 of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”), the term supply includes all forms of supply of goods or services or both by way of sale, transfer, barter, lease etc. The phrase ‘goods’ and ‘services’ are defined under Section 2(52) and 2(102) respectively of the CGST Act as:

“goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply”

“services” means 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”

- 5.2 The GST laws provide for a concept of composite supply which is defined under Section 2(30) of the CGST Act as below:

“Composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

5.3 Therefore, composite supply is a supply where:

- (a) The supply consists of two or more taxable supply of goods or services or both;
- (b) These shall be supplied in conjunction with each other and are naturally bundled;
- (c) One of the supplies shall be a principal supply.

5.4 Further, as per section 8 of the CGST Act, in cases of composite supply, the classification of the transaction and the applicable rate of tax is to be determined as per principal supply. The term principal supply has been defined under section 2(90) of the CGST Act as below:

“Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary”

5.5 In this regard, the Central Board of Indirect Taxes (“CBIC”) have explained the concept of ‘composite supply’ as under:

“Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below-

The perception of the consumer or the service receiver, if large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package would be treated as naturally bundled in the ordinary course of business.

Majority of service providers in a particular area of business provide similar bundle of service. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better environment of a main service. For example, service of stay in a hotel is often combined with the service of laundering of 3-4 times of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators are not determinative but indicative of bundling of services in ordinary course of business are –

There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

- *The elements are normally advertised as a package*
- *The different elements are not available separately*
- *The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.*

5.6 In the present case, as per the industry practice, the OEM customers require that the Appellants and other similar players in the market would provide services in the nature of design and development of tools and in the process, appoint a third party vendor to manufacture the actual tools. Such tools and patterns would not be available separately. The elements are normally advertised as a package which would be available for a single price.

5.7 A review of the definitions suggests that principal supply in an agreement is the one which is the predominant supply. Such predominant supply may be determined on the basis of (a) value of such supply or (b) something that is necessary for the essential functionality. Where the predominant supply is that of goods the contract would be taxed as a supply of goods and in case the predominant supply is that of services, then the contract would be taxed as a supply of services.

5.8 In the present case, overseas OEM engages Appellant and assigns it the responsibility to (i) assist in manufacturing process planning (ii) designing and developing the tool (iii) identify the third party manufacturers who can manufacture tools based on the drawings/designs/patterns for manufacture of camshafts (iv) engage the third party vendors to manufacture the tools (v) use such tools for manufacture of camshafts. In this regard, the engagement of the vendors for manufacture and supply of camshafts is common industry practice followed by majority of industry players.

5.9 Therefore, all the above activities constitute a composite supply on part of Appellant. Further, it is highlighted that the OEMs and the Appellant clearly understand that after the life span of the tools the same would be scrapped by the Appellant, as the tools will be of no use to the Appellant due to uniqueness of each tool used in manufacture of particular camshafts. Therefore, each tool designed as per specification will be of no use without such specification and hence the such designs and specification provided by Appellant takes over the predominant nature of supply.

- 5.10 Additionally, the value of the activity performed by the Appellant is driven by the assistance rendered in respect of manufacturing process planning and not the value of material used for the manufacture of the tools per se also indicates towards the fact that the principal supply is the assistance involved in designs and drawings and development of tool, on the basis of which the entire efficiency of camshaft depends. Please refer the below mentioned data on and illustrative basis.

Name of the Customer	Value as per OEMs/ Machinists PO (in INR)	Value charged by the Vendor
Musashi Hungary Manufacturing Limited	16,72,692	1,28,325
General Motors do Brasil LTDA	94,75,200	71,31,040

- 5.11 In this regard, the break-up of the cost of tooling in percentage terms is set out below:

Activity	Percentage of total price	Cost incurred by
Drawing, Design, Modelling, simulation, documentation	55-60%	Appellant
Raw material	10 - 11%	Third party vendors
Machining & processing including machine programming	15 - 16%	
Assembly	8-9%	
Mark ups including SGA & Profit	10.00%	

- 5.12 So, the Appellant undertakes in-house drawing, design, modelling, simulation and documentation for manufacture of the tools, which constitutes for majority i.e. 56-60% of the cost of tools, i.e. the service element involved in the development of tools. The third party vendors charge for the manufacture of tools, which constitutes for ancillary activities such as procurement of raw material (10-12%), machining (15-16%) and assembly (8-9%), profit margin (10%). Therefore, merely 42-43% of the cost of the tools is attributable to third party vendors. Therefore, the predominant activity of designing and developing the tools is undertaken by the Appellant.
- 5.13 Therefore, in the Appellant's humble view, Appellant is engaged in supply of services to overseas OEMs/Machinists, as already accepted by the MAAR in Impugned Order. However, the MAAR has erred in understanding the scope of services provided by the Appellant.
- 5.14 The Subject Transaction has the parties contractually agreeing to function on a principle to principle basis and not a facilitator. However, the MAAR has tried to give an essence of

intermediary to Subject Transaction on assumptions and conjecture of its own. It is an established position of law that when the parties agree contractually among themselves, nothing can be read into the same. Reliance in this regard is placed on the case of **P.Madhusudhan Rao vs Lt.Col.Ravi Manan, And Another on 12 March, 2015** [C.R.P. No. 4515 OF 2014 - Andhra Pradesh High Court] which has held:

"27. From the Rules stated above, when the language used in a document is unambiguous conveying clear meaning, the Court has to interpret the document or any condition therein taking into consideration of the literal meaning of the words in the document. When there is ambiguity, the intention of the parties has to be looked into. Ordinarily the parties use apt words to express their intention but often they do not. The cardinal rule again is that, clear and unambiguous words prevail over the intention. But if the words used are not clear or ambiguous, intention will prevail. The most essential thing is to collect the intention of the parties from the expressions they have used in the deed itself. What if, the intention is so collected will not secure with the words used. The answer is the intention prevails. Therefore, if the language used in the document is unambiguous, the words used in the document itself will prevail but not the intention."

- 5.15 In view of the above, the Subject Transaction has to be read and understood according to what has been agreed between the parties and not as per the assumptions of the MAAR.

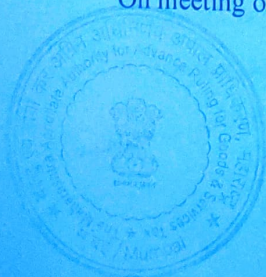
B. SUPPLY OF ASSISTANCE IN DESIGN AND DEVELOPMENT OF PATTERNS USED FOR MANUFACTURE OR CAMSHAFT WILL NOT QUALIFY AS INTERMEDIARY SERVICES

- 5.16 The term intermediary has been defined under Section 2(13) of the IGST Act, 2017 as following:

"(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;"

- 5.17 On reading of the above definition, it appears that an intermediary will:
- (a) Have a character of broker, an agent or any other person, who arranges or facilitates the supply
 - (b) Such person functions as a conduit between the two parties
 - (c) The person will not be making the supply on its own account

On meeting of the above three conditions, a service may be regarded as intermediary services.



5.18 In order to understand the meaning of the scope of 'intermediary services', it is relevant to make reference to Circular No. 159/15/2021/-GST dated 20.09.2021:

- a) **Involvement of minimum three persons:** There must be three persons i.e. two of them transacting in the supply of goods, services or securities i.e. the main supply and third person arranging or facilitating the supply.
- b) **Two distinct supplies:** The supply must contain one 'main supply' between the principals and another is 'ancillary supply' which is the supply of intermediary services.
- c) **Intermediary has the character of an agent, broker or any other similar person:** The definition of the intermediary uses the expression arranges or facilitates thus it suggests a subsidiary role for the intermediary. The role of intermediary is supportive i.e. it arranges or facilitates some other supply, which is the main supply and does not provide the main supply himself.
- d) **Does not include a person who supplies such goods or services or both or securities on his own account:** The definition of intermediary services specifically mentions that intermediary *"does not include a person who supplies such goods or services or both or securities on his own account"*. Use of word *"such"* in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".
- e) **Sub-contracting for a service is not an intermediary service:** Where the supplier of main service sub-contracts either fully or partly the supply of such service; the sub-contractor dealing in main supply would not be considered as an intermediary.

The circular further clarifies that the concept of 'intermediary' was borrowed in GST from the Service Tax Regime, as given in Rule 2(f) of Place of Provision of Services Rules, 2012 and it may be relevant to make reference to the Education Guide dated 20 June 2012 issued by the CBIC under the *erstwhile* Service Tax regime provides the following:

"Para 5.9.6 what are intermediary services?"

Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any given time:

- *The supply between the principal and the third party; and*

- The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.'

For the purpose of this Rule, an intermediary in respect of goods (such as commission agent i.e. buying or selling agent or a stockholder) is excluded by definition. Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the Rule as "the main service"), but provides the main service on his own account. In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:

i) Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

ii) Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

iii) Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable."

- 5.19 The Education Guide specifically recognizes and well explains that all situations of provision of services on a someone else's behalf, will not qualify as an "intermediary". Where the service is provided on the "own account" of the service provider, the categorization as an "intermediary" does not arise. It further recognises the need for charging commission. However, in the present case, the principal service is provided by the Appellant on its own account and no commission is being charged for outsourcing meagre amount of services to third party vendor on behalf of service recipient.

Appellant is providing services on its own account

- 5.20 As already mentioned in the facts above, the Appellant undertakes the entire activity on its own account. The Appellant undertakes in-house drawing, design, modelling, simulation and documentation for manufacture of the tools, which constitutes for majority i.e. 55-60% of the cost of production of tools, i.e. the service element involved in the development of tools. The actual manufacturing of the tool is outsourced by the Appellant to the third party vendors who charge for the manufacture of tools. Therefore, **it is clear that the entire activity in relation to the development of the tools is provided by the Appellant himself, in the process of**

which, some portion of the activity is outsourced to third party vendors. The Appellant on instructions of the OEM's/Machinist (after undertaking the feasibility analysis) identifies and engages a third party Indian manufacturer for machining the tools as per the specification provided by the Appellant. This is done on their own account and not in order to provide any facilitation.

- 5.21 It is a settled position of law, as also held in numerous judicial pronouncements that when the services are provided on own account, the same will be excluded from the definition of intermediary. In this regard, reliance is placed on the case of **M/S Global Transportation Services Private Limited v. Commissioner Of Service Tax, Mumbai** [2016 (9) TMI 291 - Authority For Advance Rulings, Maharashtra] wherein it has been held as follows:

"It is noticed that the definition of "intermediary" does not include a person who provides main service on his own account. It is observed the relationship between the applicant and the airline/shipping line is separate and distinct from the relationship between the applicant and its customer. The applicant contracts with its customer to provide for transportation of cargo. The applicant also negotiates with an airline/shipping line seeking space and time for transportation of cargo. However, it does not imply that the applicant contracts with the airline on behalf of its customer as an intermediary. In the present case, the airline issues the Awb upon the applicant who adorns the role of a "consignor". In case of damage or destruction of cargo, the applicant shall have an independent right of recover of damages against the airline. Similarly, the customer shall also have a right to recover damages from the applicant in such a scenario. Therefore, agreement between applicant and airline/shipping line would be on principal to principal basis....."

9. In the case before us, applicant would enter into an agreement with the carrier for transportation of cargo i.e. airline/shipping line. This service agreement would be on principal to principal basis and not as agent of said airline/shipping line. Therefore, applicant would be covered by the exclusion clause i.e. provides the main service- inbound and outbound shipment on his own account in terms of Rule 2(f) of POP Rules and thus not covered under Rule 9 (c) ibid as "intermediary" service. Therefore, place of provision of said service will not be location of service provider."

- 5.22 Further reliance is placed on the case of **M/S Frame Movie Pvt. Ltd. v. CGST and Excise, Bhiwandi Commissionerate** [2020 (9) TMI 259 - CESTAT MUMBAI] as follows:

"12. Therefore, in view of the above, I find that the service provided by the Appellant has been provided on its own account and therefore, does not qualify as intermediary service. The Advance Ruling in the case of M/s Godaddy India Web Services Pvt. Ltd. [2016-TIOL-08-ARA-ST] also aids the case of the Appellant, wherein it was held that 'support services'

from vendors used for providing main service to the service receiver are not intermediary services.”

5.23 Further reliance is placed on the case of **Principal Commissioner CGST Delhi South Commissionerate Versus M/S. Comparex India Pvt Ltd.** [2020 (1) TMI 429 - CESTAT NEW DELHI], wherein the Hon’ble Tribunal has held as follows:

“24. In the present case, not only does the agreement specifically mentions that there is no relationship of principal and an agent between Microsoft and the respondent but it is also clear from the agreement that the respondent is free to sell the product at any price to the customer, though the price to be paid by the respondent to Microsoft is fixed. The agreement also provides that payment has to be made to Microsoft even if the customer does not pay the respondent. This is, therefore, a case where the respondent provides the service or supplies the good on his own account.

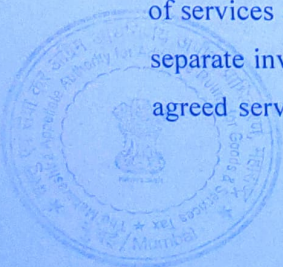
25. The Commissioner (Appeals) has also recorded a categorical finding that the respondent had purchased the software from Microsoft and sold it either in the same condition or in a customized condition to the customers, which fact was also evident from the balance sheet and so the respondent has provided service on its own account and would not be an “intermediary” as defined in Rule 2(f) of the 2012 Rules.”

In view of the above, the Appellant will not qualify as intermediary as the Appellant because of the following reasons –

- a) The Appellant is engaging a third party vendor to merely give physical form and shape to the tools;
- b) The Appellant doesn’t charge any separate commission from the OEMs/ Machinist for getting the tools manufactured from third party vendors;
- c) The Appellant is paid a fixed remuneration for the development of the tools;
- d) The Appellant will be required to pay for the manufacture of the tools to the third party vendors, irrespective of whether the Appellant gets paid for the same by the OEMs/ Machinists;

Appellant is not facilitating any service between the OEMs/Machinists and third party vendors

5.24 It is to be noted that the OEMs/Machinists raise a separate purchase order for the Subject Transaction and the Appellant upon development of tools raises separate invoice on OEM/Machinists. It is to be noted that the above transaction does not indicate any facilitation of services and Appellant himself provides the service for which separate purchase order and separate invoices are raised by the parties on principle to principle basis. For performance of agreed services, the Appellant engages/ sub-contracts a small portion of the work to a third



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party and pays them separately. It may be further stated that the Appellant is not charging any commission from the OEMs/ Machinists for engaging the third party vendor.

- 5.25 Facilitation of service for 'commission' is one of the main conditions required to be fulfilled to fall within the ambit of intermediary service. However, when such services are provided on principle to principle basis, they should not qualify as intermediary services. Such position has been accepted by the Appellate Authority of Advance Ruling, Karnataka in the case of *In Re: M/S. Ascendas Services (India) Pvt. Ltd. [2020 (8) TMI 525 - Appellate Authority For Advance Ruling, Karnataka]* wherein it has been held:

"In the light of the above discussions, we agree with the ruling given by the lower Authority and hold that the service provided by the Appellant in arranging the transportation of the employees is not rendered in the capacity of an intermediary and is not a facilitation service between BMTC and the commuters. The service of transporting the employees of the corporate clients of the International Tech Park is rendered by the Appellant on his own account on a principal to principal basis for a consideration."

- 5.26 Further reliance is placed on the case of *In re Vservglobal Private Limited (GST-ARA-03/2018-19/B-59 dated 07.07.18 – AAR Maharashtra)* wherein this authority has held as follows:

"4. In the instant case, the applicant proposes to supply 'Business Support Service' comprising of 'Back Office Support' and 'Accounting' which is its Principle Supply. If these services also facilitate supply of goods, then it is only an incidental supply to the Principle Supply. As already submitted, the applicant would come into picture only after finalization of Purchase / Sale deals by the clients. They said 'Business Support Services' would be provided by applicant to its client would be on Principle to Principle basis. Therefore, the instant case is covered by exclusion clause in definition of 'Intermediary'."

- 5.27 On analysis of the above judicial pronouncements, it is respectfully prayed that the Appellant cannot fall under the definition of intermediary as the Appellant is not facilitating any service but providing the service to the OEMs/Machinist on its own account contractually on raising invoice for provision of service on principle to principle basis. Further, no commission has been charged by the Appellant for undertaking the Subject Transaction.

- 5.28 Therefore, on reading of the above provisions and on applying the principles evolved through various judicial and quasi-judicial pronouncements in the facts of the present case it vehemently submitted that the Appellant will not qualify as intermediary as:

- (i) The Appellant is providing the services of design and development of tools and patterns used for manufacture of camshaft on their own account and on a principal to principal basis;
- (ii) The Appellant is not facilitating any supply between the offshore customer and the tool manufacturer;

C. **IMPUGNED ORDER BEING A NON-SPEAKING ORDER HAS BEEN PASSED WITHOUT FOLLOWING THE PRINCIPLES OF NATURAL JUSTICE**

- 5.29 It is a settled position of law that the Adjudicating Authorities are required to examine the submissions made by the taxpayers in order to give the taxpayers a fair chance to defend their case. Further, it is against the very tenets of principles of natural justice that the taxpayer's submissions are not considered, and a speaking order is passed either accepting or rejecting such submissions. Unless the taxpayer's submissions are dealt with, the taxpayer would always be at a handicap before the appellate authorities as he will not be aware of the rationale basis which the submissions were rejected.
- 5.30 A bare perusal of the Impugned Order would indicate that there is no discussion with respect to any of the submissions made by the Appellant about the nature of services provided. The MAAR had concluded, "The Appellant is facilitating the manufacture of goods for OEMs/Machinist by third party vendors and hence shall be categorised as intermediary". The MAAR has ignored the fact, which is also the main crux of the submission made by the Appellant, that entire services involved in the Subject Transaction are provided by the Appellant on their own account.
- 5.31 However, ignoring all submission made by the Appellant and without stating any reason whatsoever, the Impugned Order has classified the Subject Transaction under the scope of intermediary, rendering the Impugned Order non speaking and non-reasoned.
- 5.32 It is a well known legal position that the cryptic and non speaking orders are not valid orders and are liable to be quashed, such as followed in the case of *Tata Engineering & Locomotive Co. Ltd. Vs Collector of C. EX., Pune* [2006 (9) TMI 185 - Supreme Court] and *C.C.E. Vs. Amul Industries Pvt. Ltd.* [2010 (12) TMI 98- Supreme Court].
- 5.33 The non-speaking order are also equated as a violation of principles of natural justice as per the Apex Court. The case of *State of Punjab Vs. Bhag Singh*, 2004(164) ELT 137 (SC) by relying upon *Alexander Machinery (Dudley) Ltd. Vs. Crabtree* [1974 LCR 120] with regard to non reasoned order, has been observed as follows:
- "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason*

is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

5.34 It is the Appellant's humble submission that it is a settled principle of law that a judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment.

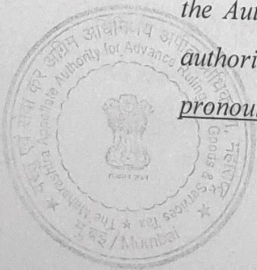
5.35 Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *Siemens Engg. And Mfg. Co. of India Ltd. v. Union of India, (1976) 2 SCC 981* where it was held as under:

"If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of their orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will alone be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audit alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

D. THE MAAR IN ISSUANCE OF IMPUGNED ORDER HAS TRAVELED BEYOND POWERS CONFERRED IN THE AUTHORITY BY THE ENABLING ACT

5.36 The Impugned Order has been passed within the provisions of Section 98 of CGST Act, 2017 which under sub section 4 and 5 provides as follows:

"(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application."



(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question."

- 5.37 On reading of the above it is clear that the MAAR as per the provisions laid down under Section 98, had to pronounce its advance ruling on the question specified in the application and could not have traversed beyond it. The MAAR could have done so by referring the same to the appellate authority. However, in the present case, the MAAR without following the procedure laid down by the law, has dictated its order going outside the authority provided to MAAR under law.
- 5.38 It is a settled position of law that departmental officers are creature of statute and must act within the binding Act. Any act going outside the provision of the law will have no legal back up. Further, when the statute provides a procedure, no additional considerations can be read into a statute.
- 5.39 Reliance in this regard is placed on the decision of the Hon'ble Apex Court in the case of **Babu v. Bar Council Kerala AIR 1999 (S. CJ 128)**, wherein the Supreme Court has held that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. In the case of Cannon India Private limited (supra), the supreme court has held that *it is well known that when a statute directs that the things be done in a certain way, it must be done in that.*
- 5.40 In view of the above, it is submitted that the MAAR in deciding a question which was never raised in the application preferred by the Applicant, has travelled beyond the scope of power conferred upon it by the statute.

RESPONDENTS SUBMISIONS

6. The Jurisdictional Officer vide their letter dated 25.11.2022 have made the following submissions:

- 6.1 The definition of composite supply is given in section 2(30) of GST Act, which reads as below:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply ;

From the above, the Composite Supply is

1. Supply of two or more goods or services together;

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2. It is a natural bundle of goods or services are usually provided together in the normal course of business.
 3. They cannot be separated (in conjunction with each other)
 4. One supply shall be a principal supply.

The definition of "Principal Supply" is given in section 2(90) of GST Act, which reads as below:

(90) "Principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

The term "naturally bundled" in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below -

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service of laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -
 - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.

In Composite supply there is a principal supply and an ancillary supply. Principal supply may be determined on the basis of something that is necessary for the essential functionality.

- 6.2 The supplies in relation to assists in design and development of tools/patterns used for manufacture of camshaft to overseas customer provided by Appellant is composite supply, because it meets the criteria's mentioned above. Overseas OEM/Machinist have perception of receipt of goods in the form of camshafts, rather than service. In general industrial practice, many products are manufactured from pattern/tools. Design and development cost of pattern

is usually incorporated in value of goods. In this supply provided by Appellant, the pattern/tool is necessary for the essential functionality. Using the same pattern/tool, Appellant produces multiple lots of camshafts. Consideration received against supply of multiple lots of camshafts from the unique pattern is higher than consideration of design and development of same pattern/tool. The pattern/tool is necessary to manufacture of camshafts. Hence, pattern/tool (goods) is Principal supply in this transaction and design and development charges (Service) are ancillary supply. Therefore, in this transaction goods is principal supply, hence the tax rate be treated as goods.

- 6.3 Also, in this regard Advance Ruling Authority, Karnataka has passed advance ruling No. KAR ADRG 35/2020 dated – 20-05-2020, in case of M/s. Dolphine Die Cast (P) Ltd. Bengaluru (GSTIN – 29AAACD5294L1Z6). (Advance Ruling order is attached herewith. (Page No. 51 to 59) as below:

"In the case of manufacture of Die by the applicant and invoiced to the recipient, without moving the goods, the applicant has to raise the tax invoice addressed to the foreign buyer. Since it is an intra-state supply, he has to collect the CGST and SGST and discharge the liability. The applicant is not eligible to claim the said payment as input tax credit on the invoice raised by him as he is not the recipient. Further if the said steel die is scrapped at applicant's end as per the instruction of the overseas customer without moving out of the country, while supplying the die scrap to the third party, the applicant has to issue intra/interstate tax invoice depending upon the nature of the transaction and collect and pay the applicable tax as per the provisions of the GST Acts."

As per above advance ruling order, the supply of die is not considered as export, because no movement was done of goods outside India. Hence, tax is leviable considering intra-state/inter-state supply.

- 6.4 The pattern/tool will always be in possession with and will be scrapped after life span by Appellant. The pattern/tool is not taken out of India. Hence, it cannot be treated as export. In view of this, Appellant is required to raise tax invoice addressed to the foreign buyer and since it is an intra-state/inter-state supply he has to collect the CGST and SGST/IGST whichever applicable, and discharge the liability.

Appellant has also shown the said supply as tooling income. Appellant has supplied pattern/tools to inter-state customers and levied CST (Central Sales Tax) on corresponding tooling income in pre-GST era.

The dominant intention of overseas customer is to get supply of manufactured pattern/tools from the appellant as per specification provided by them. The ownership of that pattern/tools always lies with overseas customer. Hence, it is clear that, the supply is in form of "Goods". Therefore, the dominant supply in present case is of "Goods" and not of "Services".

- 6.5 Considering the above provisions and scenario, M/s PCL's activity of design and development of patterns used for manufacturing of camshafts for a customer is composite supply. But, the principal supply is not supply of service. Principal supply is of goods i.e. supply of pattern/tool. So, tax treatment should be applicable as supply of goods. The view of the M/s PCL that tax treatment should be as applicable to the supply of services is not acceptable. As this supply of goods does not meet to the criteria of export, M/s PCL also needs to raise invoice and discharge the tax liability accordingly.

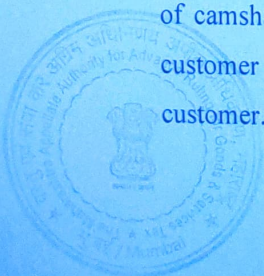
PERSONAL HEARING

7. The personal hearing in the matter was conducted on 25.11.2022 which was attended by Shri. Ankit Sachdeva, Advocate on behalf of the Appellant, wherein the Appellant reiterated their earlier submissions made while filing the Appeal under consideration.

DISCUSSIONS AND FINDINGS

8. We have carefully gone through the entire appeal memorandum containing the submissions made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR, wherein the MAAR has held that the activity of design and development of patterns used for manufacturing of camshaft for a customer is a supply of service in the form of intermediary service. MAAR observed that the M/s PCL is not providing any services to customers on its own account. The designs are provided to the third party vendors on behalf of the overseas customers of M/s PCL. The services provided by them is to their overseas customers and as per the requirements and directions of its overseas principals. Thus, MAAR held that M/s PCL is satisfying all the conditions of an intermediary and M/s PCL is supplying intermediary services as per the provisions of the IGST Act, 2017.
- 9.1 As regards the aforesaid observations of the MAAR, the Appellant have contended that the Appellant is providing services of design and development of tools and patterns used for manufacture of camshaft on their own account and on a principal to principal basis. Appellant contended that he is not facilitating any services between the overseas OEMs/machinists and third party vendors. Appellant is not charging any commission from the overseas customers. Appellant further contended that his services cannot be categorized as intermediary services and accordingly, MAAR order stating so is liable to be quashed.
- 9.2 Appellant further contended that activity of designing and development of tools for the overseas OEMs/machinist is a composite supply and principal supply in tool development is of service. Hence, appellant argued that considering the definition of "composite supply", activity of tool development is supply of service.

10. On perusal of the aforesaid contention of the Appellant vis-à-vis the impugned advance ruling of the MAAR, the moot issues before us are as to whether activity of appellant is an intermediary service as held by the MAAR or as contended by the appellant, an activity of design and development of patterns/tools used for manufacturing of camshafts, for a overseas customer is a composite supply where the principal supply is supply of services.
11. As per submission made by appellant, it is appellant who prepares the drawing and designs of tool / pattern and also check feasibility of its manufacturing. The techno commercial offer is being made by the appellant to overseas OEM / Machinist. Overseas OEM / Machinist releases the purchase order, for specific number of units of tools, after approval of techno commercial offer. The appellant undertakes in-house drawing, design, modelling, simulation and documentation for manufacture of the tools. Whereas, it hires third party vendor for machining (manufacturing) the tool as per specification provided by the appellant. The third party vendors charge for the manufacture of tools, which is paid by the appellant. The third party vendor delivers the tool to appellant, of which appellant further raises supply invoice to overseas OEMs / Machinist specifying therein the description of goods (tools), quantity, rate per unit, etc. However, as industry practice in this sector appellant keeps such tools with it for further use in manufacture of camshaft.
12. The invoice raised by the appellant also exhibits that the tools of specific designs as per the specifications of overseas customer are supplied to them. Thus, form perusal of the purchase order placed by the overseas customers and supply invoice raised by appellant, it is clear that dominant intention of overseas customer is to get the supply of manufactured pattern/tools from the appellant as per specification provided by them.
13. From the facts of the case, it is clear that the appellant is making such supply of tools on his own against the consideration which is price for tools and hence, there is no issue of receiving commission from overseas customers. Appellant is not facilitating any supply between overseas entity and third party vendor. The impugned transaction is supply of goods i.e. tools from appellant to customer on principal to principal basis. Considering these facts of and definition of "intermediary" provided under section 2(13) of the IGST Act, 2017, it is very much clear that appellant is not an "intermediary". Hence, the findings of the MAAR that the impugned activity is an intermediary service is erroneous and not acceptable.
14. The appellant first manufactures the tool as per the requirements and specification given by the customer. This tool is retained by the appellant and used for the manufacture and supply of camshafts. The appellant raises the tax invoice for this tool in the name of overseas customer in convertible foreign exchange though the tool is not physically exported to the customer. The ownership of the tools remains with the overseas customers. Thus, it is amply

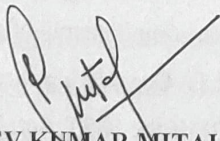


clear that impugned transaction between appellant and overseas customer is of supply of goods i.e. pattern/tool of specified specifications.

15. The similar issue in case of IBEX Engineering Pvt Ltd vs. State of Karnataka has been decided by Hon'ble High Court of Karnataka [Sales Tax Appeal 91 of 2009 Order dated 9-2-2012], where appellant manufactured Moulds as per the order of overseas customers and received the payment labelled as "Tool Development Charges" from its foreign associate for manufacturing of Moulds. As like present case, the Moulds never moved out of the factory and used for manufacture of engineering parts which are subsequently exported to the overseas customer. The High Court held the impugned transaction as a sale of goods i.e. Moulds and is exigible to VAT.
16. On careful perusal of the definition of the term "composite supply" and the essential conditions enumerated in the definition, it is seen that the composite supply comprising two or more taxable supplies of goods or services or both, or any combination thereof should be made by a taxable person to a recipient. However, in the instant case, considering the facts of the case, it is amply clear that impugned transaction between appellant and overseas customer is of supply of goods i.e. pattern/tool of specified specifications. Hence, contentions of the appellant that impugned transaction is composite supply where the principal supply is supply of services is not valid. In view of the above discussion, we hold that the impugned transaction is supply of goods i.e. pattern/tool of specified specifications.
17. In view of the above discussions and findings, we pass the following order:

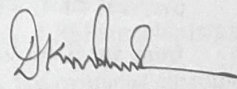
Order

We, hereby, modify the Advance Ruling Order No. GST-ARA-22/2020-21/B-36 dated 29.03.2022 by holding that the impugned transaction between appellant and overseas customer is supply of goods.


(RAJEEV KUMAR MITAL)

MEMBER




(Dr. D.K. SRINIVAS)

MEMBER

Copy to the:

1. Appellant;
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.

4. Commissioner of State Tax, Maharashtra
5. Deputy Commissioner of State Tax (SOL-VAT-E-002), Solapur Division.
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy.