

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D15, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD — 380 009.**

**ADVANCE RULING (APPEAL) NO. GURGAAARJAPPEAL/2022/
(IN APPLICATION NO. Advance Ruling/ SOST&CGST/202 I/AR/13)**

Date: 27.09.2022

Name and address of the appellant	:	Mis. Hilti Manufacturing India Pvt. Ltd. Plot No. 423. GIDC Estate, P.O.Kabilpore, Naysari, Gujarat:396424
GSTILT of the appellant	:	24AADCB2566L1ZM
Advance Ruling No. and Date	:	GUPGAAR/R/2612021 dated 09.07.2021
Date of appeal	:	18.08.2021
Date of Personal Hearing	:	08.09.2022
Present for the appellant	:	Jigar Shah (Advocate)

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'COST Act, 2017' and the 'GGST Act, 2017') are in *purl rnateria* 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, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the COST Act, 2017 and the GGST Act, 2017 by NU. Hilti Manufacturing India Pvt. Ltd., (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/26/202 I dated 09.07.2021.

3. The appellant has raised the following question for advance ruling in the application for Advance Ruling filed by it.

'(i). Whether the services provided by the applicant to the entities located outside India is covered under Section 13(2) of the Integrated Goods and Services Tax Act, 2017?

'(ii). Whether the services provided by the applicant is liable to Central Goods and Service Tax and State Goods and Service Tax or Integrated Goods and Services Tax or is it eligible to be treated as 'zero rated supply' under Section 16 of the Integrated Goods and Services Tax Act, 2017.'



4. The appellant has submitted that; they are engaged in the manufacture and supply of diamond cutting tools and other innovative tools required by the construction industry such as Diamond wheels, Diamond core hit drill. Grinding wheels. Grinding plate. Easy cut diamond segments, Flange Barrel and Frame Straw/Gang saw blades; they have been granted approval from the Development Commissioner (KASEZ) to operate as an 100% Export Oriented Unit (EOU); they have a separate R&D unit wherein research and development activities are carried out for their own purposes as well as for other customers; they are carrying out activities on behalf of entities situated outside India i.e. carrying out such R&D activities on the product samples/goods sent by the foreign entities for R&D purposes and submits a detailed report to them thereafter; they have entered into an agreement with Hilti Aktiengesellschaft, located at Feldkircherstrasse 100, Postfach 333. Principality of Liechtenstein, 9494 FL-9494. Leichtenstein for carrying out various R&D activities on the product samples provided to the appellant in India; as per the terms of the said agreement. The appellant is conducting tests on various products. Providing product development and engineering services such as conducting benchmark testing and feasibility studies, analyzing data and targets. Designing the products, making prototypes, verifying and validating the process and product to foreign company; all the results of these activities undertaken by the appellant are then provided to the foreign company comprising of findings. Performances, parameters, know-how, inventions, developed processes, objects and programs in the form of a report.

41 The appellant further submitted that; they raise periodic invoices of such services provided by them on the foreign customer and the consideration is received by the appellant in foreign currency; the invoices raised by them presently are inclusive of IGST at the rate of 18% on the taxable value of the R&D services provided to the foreign company and are thus making payment of IGST on the R&D services provided to foreign companies; the appellant is of the view that the services provided by them falls under 'export of service' and is thereby exempted from tax liability under IGST Act, 2017; the R&D services provided by the appellant would qualify as zero-rated supply in terms of Section 16 of the LOST Act. 2017; Section 7(5) of IGST Act, 2017 provides that the supply of service shall be treated as supply of service in the course of inter-state trade or commerce when the supplier is located in India and the place of supply is outside India and that as per Section 2(23) of IGST Act, 'zero rated supply' shall have the meaning assigned to it in Section 16 of the IGST Act; accordingly the export of service shall qualify as 'zero rated supply' and can be supplied without payment of IGST; the services provided by them fulfills all the conditions under Section 2(6) of the IGST Act, 2017 and thereby qualify as an 'export of service': while the location of the appellant is in India in terms of Section 2(15)(a) of the IGST Act, the recipient of services (i.e. foreign companies) are located outside India in terms of Section 2(14)(d) of the IGST Act; a bare perusal of Section 13 of the IGST Act would reveal that generally the place of supply of services shall be the location of the recipient of services in terms of Section 13(2) of the IGST Act, except in case of the services specified in sub-sections (3) to (13) of the IGST Act.

5. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUNGAAR/R126/2021 dated 09.07.2021, *inter-alia* observed that; the goods were sent by Hilti Aktiengesellschaft. the recipient of services to

the appellant which are required to be made physically available to the [appellant. so](#) that appellant conducts various tests and R&D activities on the said goods and prepare the results and supply the subject service to the recipient; this situation is covered at Section 13(3)(a) of IGST Act; as per said section 13(3)(a) of IGST Act, the place of supply of the following services shall be location where the services are actually performed i.e. location of the appellant: as the services provided by the appellant are in the form of R&D activity undertaken on the sample goods provided by the recipient i.e. the sample goods have to be made physically available by the recipient to the appellant in order to enable the appellant to provide services ; the place of supply in the present case will be the location where the services are actually performed; the place of supply of services is therefore, Gujarat. In view of the foregoing the GAAR gave ruling as under:

- "1. The subject services do not merit to be covered under Section 13(2), IGST Act.
2. The subject services are liable to CGST and SGST."

6 Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

6.1 The appellant submitted that the ruling has not given any reasonable basis to conclude as to why the services in the present case are falling under Section 13(3)(a) of the IGST Act. Further appellant submitted that; the authority has failed to take into consideration that in the present case, the goods supplied by the foreign customers are getting consumed while performing the services on them and no goods are sent back by the appellants to the foreign customers; the present situation is not getting covered by the provisions of Section 13(3)(a) of the IGST Act, as observed in the ruling; that the services provided by the appellant are covered under Section 13(2) of the IGST Act; that the appellant is carrying out R&D services on the samples/goods provided by the foreign company, which is located outside India; it is a settled principle of law that when the service is consumed outside India, tax is not leviable in India; that reliance in this regard can be placed on the following cases wherein it has been specifically held that even though the test has been conducted in India and the test reports were prepared in India, the service will be treated as export of service as the service is consumed outside India:

1. **Commissioner v WA. Research India Ltd. 2010 (18) STR 439=2009 (11) TMI 213- CESTAT, Ahmedabad**
2. **KSH International Pvt. Ltd. v. Commissioner 2010 (18) STR 404-2010 (1) TMI 143-CESTAT, Mumbai**
3. **Commissioner of Central Excise Pune-I Vs. Sai Life Sciences 2016 (42) STR 882 (Tri-Mumbai) = 2016 (2) TMI 724-CESTA Mumbai- Post introduction of Place of Provision of Service Rules 2012.**

That in the case of **Commissioner v B.A. Research India Ltd. 2010 (18) SIR 439** it was held that the performance of testing and analysis has no value unless and until it is delivered to its client; thus delivery of report to its client is an essential part of the service, NA had been delivered and used outside India; therefore it should be construed as export of service; that in the instant case, the samples get consumed in the process of R&D, accordingly in the light of the submissions and legal decisions cited hereinabove

the place of supply in case of R&D services would be the location of the service recipient in terms of Section 13(2) of the IGST Act; thus the service recipient being a foreign entity, is located outside India; therefore, the place of supply of the service would be outside India.

6.2 The appellant further submitted that; the payment for such service has been received in convertible foreign exchange; and the appellant and the recipient of service (i.e. foreign company) are not merely establishments of a distinct person in accordance with explanation 1 in Section 8 of the CGST Act; that in light of the submissions made hereinabove, it is evident that in cases where the goods ceased to exist in the form in which it had supplied, it cannot be said that services have been provided in respect of the goods even if it cannot be denied that services have been rendered on the goods; that the sample goods supplied to them by the foreign customers get consumed during the performance of testing and analysis services and such goods are not sent back to the customers; thus the services in the present case are not covered under Section 13(3)(a) as observed by the impugned ruling; the findings of the impugned ruling to such extent are wholly incorrect and liable to be set aside; that the services provided by the appellant are covered under Section 13(2) of the IGST Act; the services provided by the appellant falls under 'export of service' as per the definition under Section 2(6) of the IGST Act, 2017; the services provided by the appellant amounts to zero-rated supply in terms of Section 16 of IGST Act; the impugned ruling is thus liable to be set aside.

7 The authorized representative/advocate for the appellant appeared for the personal hearing, which was conducted through virtual mode on 08.09.2022. During the course of personal hearing the authorized representative/ advocate for the appellant submitted that there is a factual change in the facts of the case to the extent that the goods/samples on which R&D services are carried out are not supplied by the foreign customer but the same are manufactured in India by the appellant and detailed report is provided to the foreign customer. He further submitted that they agree to resubmit their case before the GAAR if the matter is remanded back.

71 The appellant further vide his letter/mail dated 15.09.2022 submitted that; inadvertently wrong facts were mentioned in the Advance Ruling Application dated 31.03.2021 filed by the appellant before the Advance Ruling Authority (ARA) on 01.04.2021; the ARA has given its ruling dated 09.07.2021 basis the submission that the foreign customer (M/s. HAG) sends the product samples/ goods for R&D testing purposes to the appellant in India and that the appellant carries out R&D activity on such goods provided to them by the foreign customer; this position is factually incorrect: the correct factual position is that the goods on which R&D services are carried out are manufactured in India by the appellant and the detailed report is provided to M/s. HAG after carrying out R&D testing thereon. The R&D services are provided to M/s. HAG to create knowledge for developing new products. If the results of the R&D activity are eligible for intellectual property right protection, M/s. HAG will be entitled to apply for the same; these goods on which testing activity is undertaken are getting exhausted in the process and are not supplied by the appellant to M/s. HAG; therefore the ARA has given the impugned ruling based on incorrect set of facts, which position need to be rectified; the record of proceedings need to be adequately corrected and ruling given on the correct

set of facts: the appellant seeks additional time of 3 weeks to make detailed submissions alongwith evidences to justify the aforesaid position.

FINDINGS :-

8. Court had carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing. Advance Ruling given by the GAAR and other material available on record.

9. Before going into the merits of the case, we find it proper to decide on the submission made by the authorized representative/advocate of the appellant during the course of personal hearing on 08.09.2022 and subsequent written submissions made by the appellant vide their letter/mail dated 15.09.2022. wherein it has been submitted that inadvertently wrong facts were mentioned in the Advance Ruling Application dated 31.03.2021 filed by the appellant before the Advance Ruling Authority on 01.04.2021. It has been submitted that the GAAR had given its ruling based on the submission that the foreign customer sends the product samples/goods for R&D testing purposes to the appellant in India and that the appellant carries out R&D activity on such goods provided to them by the foreign customer. However the correct facts as informed by the appellant is that the goods on which R&D services are carried out are manufactured in India by the appellant and the detailed report is provided to the foreign customer after carrying out R&D testing thereon.

¶ Court found that the appellant in their application made before the GAAR has submitted that the foreign entities send the product samples/goods for R&D purposes to the appellant in India; that the appellant is carrying out such R&D activity in India on the goods provided to them by the foreign customers and submitting a detailed report to them thereafter. The appellant have also submitted that they have entered into a contract with Hilti Aktiengesellschaft, pursuant to which, the appellant is carrying out R&D services on the samples I goods provided by the foreign company, which is located outside India. Now the appellant before this authority has submitted that these were inadvertently wrong facts mentioned in the advance ruling application made before the GAAR. They have now pointed out that the goods are not supplied to the appellant by the foreign customer but the same is manufactured by the appellant in India and detailed report is provided to the foreign customer after carrying out R&D testing thereon. We find that there has been significant change in the facts of the case presented before the GAAR and now made before this authority by the appellant. They stated during the course of personal hearing that the matter may be remanded back to GAAR for fresh consideration and decision.

10. The appellant has now presented new facts which have not been placed before the GAAR and the ruling given by the GAAR is thus based on different facts. Further, as the appellant have got the subject advance ruling based on different set of facts, the advance ruling given is not valid in view of the provisions of Section 103(2) and 104(1) of the COST Act. 2017.

11. In view of the above discussion we find it fit to remand the matter to the Authority for Advance Ruling i.e. the GAAR for fresh decision. The GAAR will take into consideration all aspects of the matter and decide the case afresh following the principles of natural justice.

12. In view of the foregoing, the Advance Ruling in question is set aside and the case is remanded back to the Gujarat Authority for Advance Ruling (GAAR) to issue necessary ruling after hearing the appellant afresh.

(Milind Torawane)
Member (SGST)

(Vive RaJan)
Member (CGST)

Place : Ahmedabad

Date :27.09.2022.