

Whether the gamut of services collectively referred to as 'Relocation Management Service' provided by the Applicant, would constitute as a composite supply or a mixed supply for the purpose of taxability under GST? HELD 1. The services supplied by the applicant do not constitute a Composite Supply and would be a mixed supply, when the services are billed for a single price in case where the relocation related services are actually provided by them. 2. The services provided to the company as an agent are "management support services of relocation related services" which is a single service covered under SAC 9985 and is covered under entry 23(ii) of Notification No.11/2017- Central Tax (Rate).

Advance Ruling No. KAR ADRG 92/2019, Dated 27th September, 2019

THE AUTHORITY ON ADVANCE RULINGS

IN KARNATAKA

GOODS AND SERVICES TAX

VANIJYA THERIGE KARYALAYA, KALIDASA ROAD

GANDHINAGAR, BENGALURU - 560 009

Present:

1. Sri. Harish Dharnia,

Additional Commissioner of Central Tax,

. . . . Member (Central Tax)

2. Dr. Ravi Prasad M.P.

Joint Commissioner of Commercial Taxes

. . . . Member (State Tax)

1.	Name and address of the applicant	M/s CARTUS INDIA PRIVATE LTD No.201, Prestige Sigma, 03, Vittaj Mallya Road, Bengaluru 560001
2.	GSTIN or User ID	29AAECC2213N1ZM
3.	Date of filing of Form GST ARA-01	24.01.2019
4.	Represented by	Sri Harish Bindumadhavan, Advocate
5.	Jurisdictional Authority -Centre	Commissioner of Central Tax, Bangalore North
6.	Jurisdictional Authority -State	LGSTO 020, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1.Rs.5,000-00 under CGST Act vide CIN RBIS19012900022422 dated 07.01.2019 2. Rs.5,000-00 under KGST Act vide CIN RBIS 18122900354 023 dated 02.01.2019

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017

1. M/s Cartus India Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AAECC2213N1ZM, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

"Whether the gamut of services collectively referred to as 'Relocation Management Service' provided by the Applicant, would constitute as a composite supply or a mixed supply for the purpose of taxability under GST?"

3. The applicant furnishes some facts relevant to the stated activity:

a. Cartus India Private Limited (hereinafter referred to as 'CIPL/'the Applicant'), is a private limited company incorporated in India on 6th December 2010. The Applicant is a subsidiary of Cartus Corporation USA (hereinafter referred to as 'Cartus US') and Cartus Global Holdings Limited, Hong Kong.

b. The Applicant is registered under the Goods and Services Tax (hereinafter referred to as 'GST') in the state of Karnataka under its registered office at 201, prestige Sigma, 3 Vittal Mallya Road, Bengaluru, 56001, Karnataka,

India.

c. The Applicant is engaged in supply of 'Relocation Management Service' to its clients located in India, which primarily involves facilitation/administration/management of relocation of client's employees from one location to another. In this regard, the Applicant enters into relocation service agreements/ statement of work with its clients. Sample agreements denoting the rendition of relocation management service by the Applicant to its clients are provided below:

i. Relocation Service Agreement entered between the Applicant and Client 1 executed on 14 November 2011 (hereinafter referred as 'RSA')

ii. Statement of work entered between the Applicant and Client 2, in reference to the Master Service Agreement executed on 28 December 2009 (hereinafter referred as 'SOW')

d. The primary objective of the Applicant of rendering Relocation Management Service can be substantiated by referring to the Objective and Scope clause of the SOW, that is reproduced below:

"Cartus, in its role as a fully outsourced relocation service provider, will manage, administer and facilitate the relocation of Client's employees from one location to another, as directed by Client, Cartus will provide all required support and coordination necessary to complete as employee relocation. "

e. Currently, for the purposes of GST, the services provided by the Applicant are classified as 'Support Services' under chapter heading 9985.

4. Regarding the nature of activities undertaken by the applicant, the applicant states as under:

4.1 The Applicant is engaged in the rendition of Relocation Management Service provided by Applicant to its clients include policy counseling, temporary living, home finding program, setting-in services etc. In this regard, applicant draws reference to the SOW (Services and Procedures: Domestic India Moves) which carves out the list of services, when provided together forms the Relocation Management Service. An illustrative list of services under the said exhibit has been reproduced below:

"Program Administration

A. Policy Counseling and Expense Administration:

Documentation, coordination and administration of Client processes, policies and procedures, explanation to employee of relocation benefits according to Client's relocation policy, discussion and resolution of exception requests. Hiring, management and authorization of third-party service providers for services including in this Agreement. Expense administration will include the audit, tracking and/or payment of Employee expenses incurred through the Employee's arrival in the payment of Employee expenses incurred through the Employee's arrival in the destination location (excluding tax payments). Cartus will pay third party invoices for services detailed in this Agreement, or such other third party invoices as agreed by Cartus.

B. Temporary Living: Coordination of temporary living with a Cartus preferred supplier on behalf of the Employee.

C. Move Management:

1) Moving Services: Cartus will coordinate the shipment and storage of the Employee's household goods using Cartus' network of household goods carriers and/or freight forwarders. Cartus collects commissions as a licensed broker (MC39S301 B) and arranger of transportation services.

2) Permanent Storage Management: Selection, hiring and management of household goods in permanent storage (long term storage) and payment of permanent storage invoices. Goods are placed in long term storage at the origin or destination location and remain in storage for the duration of the assignment or subsequent assignments.

International Host Country Services

Client will use Cartus and/or Cartus selected suppliers to provide International Host Country Services as detailed below:

A. Home Finding Programs

1) Accompanied Home Finding (By Cartus preferred Local Destination Service provider ("DSPr)). Employee is accompanied by DSP providing direct personal support throughout all home search activities. DSP co-ordinates home search activities, negotiates leases, and manage all real estate brokers.

B. Leasehold Assistance

- 1) Lease Coordination and Negotiation, (for Employees who have already found a property). Lease review (if legal review is required the cost will be charged as a Direct Expense), negotiation of lease terms, coordination of all signatures required, property walkthrough and completion of a property condition form.
- 2) Leasehold Improvements, Assistance with negotiated improvements prior to move-in to property. Coordination of improvements and repairs to the property as required by the employee and approved by the landlord.
- 3) Lease coordination and Renewal, (For Employees who are extending lease at current location). Lease review (if legal review is required cost will be charged as a Direct Expense), and coordination of all signatures required.
- 4) Leave Novation, Negotiation of change of name (landlord or tenant) and coordination of all signatures required.

C. Settling-In Services

1) Settling-In Complete. Provides welcome kit review, neighborhood familiarization, commuting advice and planning, shopping, dining, exercise facilities, entertainment options, medical facilities, domestic help assistance in hiring, currency exchange information, groups and activities discussion, assistance with utility hookup, bank account set up, local registration, six month information line available during business hours, and assistance with the completion of driver's license forms and scheduling of driving lessons and exams.*

* Available as part of setting-in-services in some countries

2) Setting-In Assisted. Provides welcome kit review, commuting advice and information on shopping, dining, exercise, entertainment, medical facilities, currency exchange, group activities, local registration bank and utility set up.

D. School Finding Assistance

1) Education Complete, provides information and schooling options, scheduling of visits to potential schools, assistance with enrollment process including completion of forms and translation, tracking of enrollment, and assistance with retrieving deposit upon departure.

2) Education Assisted, provides information and schooling options, and scheduling of visits to potential schools.

4.2 Similar to the above services, the Applicant provides various services to its client described in detail under Article 23 of the RSA. These services include destination-based services, global departure services, policy counselling, immigration process, counselling/administration, temporary living management, household goods shipment arrangements, expense administration, home country property management facilitation, departure programme, language training coordination etc., which encompass to form the Relocation Management Service.

4.3 The arrangement between the Applicant and its client is based on the fundamental principle that such Relocation Management Service is primarily for facilitation of smooth transition of client's employees and/ or his family to another location. To ensure the smooth transition of employees, the client chooses the services that are offered by the Applicant.

4.4 Further, the number of services to be procured by the client from the Applicant is determined basis the requirement of client's employees and various other factors viz. employee title, family makeup, to/from location etc. In this regard, drawing reference from the RSA, the Applicant offers packages under the relocation Management Service, in either of the following ways:

a. Bundled program of a single consideration:

Under this program, the Applicant offers a multitude of services in a package that are essential for the relocation of an employee and/ or his family to another location.

This program is a constitution of different packages that involves various services brought under a bundled form. The said packages offer options to the clients befitting to their specific needs. Therefore, the client opts for the package that is most suitable, for relocating a specific employee (with or without family) to any other location. This program may be referred to as the standard program wherein certain sets of packages have been formed and could be opted with no customizations.

It is imperative to note that such services are provided for a single consideration, wherein the separate line-item wise pricing is not identified. An illustrative list of this program is outlined herein below:



Bundled program	Services Included
Standard & Premier	<ul style="list-style-type: none"> - Policy counselling - Home search-2 days, settling in -1 Day, school finding - Temporary living - Expense management - Employee/family travel coordination - Moving services - Car (airport pick-up and delivery) - Web tools, reporting & supplier Management
Intern Bundle	<ul style="list-style-type: none"> - Policy counselling - Temporary living - Expense administration - Employee travel coordination - Car (airport pick-up and delivery) - Web tools, reporting & supplier management
Lump Sum Only	<ul style="list-style-type: none"> - Policy counselling - Expense administration - Web tools, reporting & supplier management

b. A la carte services, where separate consideration is charged for each identified service:

Under this program also, the Applicant offer services in a packaged form. However, such services constituting a package differ from a bundled program in terms that under a la carte services, each identified individual service has an independent pricing and client can opt for either of the individual services, for relocating an employee. An illustrative list of this program is outlined herein below:

A La Carte Services	Services Included
Destination Services	<ul style="list-style-type: none"> • Pre-assignment visit/orientation tour • Arrival assistance • Temporary housing assistance • Home finding search program • School search program • Settling-in services/host country formalities • web based destination services • Car rental coordination • Airport Pick-up and Delivery • Web tools, Reporting & Supplier Management.
Global Departure Services	<ul style="list-style-type: none"> • Instruction on lease termination-disconnect/transfer utilities, return of security

	deposit, mail forwarding, etc
Candidate Assessment System	<ul style="list-style-type: none"> • Detailed Analysis • Self-Assessment Tool

4.5 In either of the above-mentioned programs (viz. bundled or a la carte), services are performed with an intention of managing the relocation of client's employees. The client selects either of the two programs post evaluating the requirements and related costs for availing a particular program.

4.6 The gamut of services provided under the ambit of Relocation Management Service has been defined and explained in detail in Article 23 of the RSA and Exhibit B of the SOW.

4.7 Under both the agreements in the instant case, the client pays to the Applicant a service fee and also reimburse for any direct cost incurred for providing Relocating Management Service. The said arrangements are elaborated in Article 24 (Fee Schedule) of the RSA and Exhibit A of the SOW. Direct costs typically represents remittances made to third party vendors by the Applicant.

5. Regarding the issue for which advance ruling is sought, the applicant makes the following submissions:

A. The entire gamut of services discussed in Annexure A involve provision of Relocation Management Service wherein an element of provision of one service is combined with an element of provision of

another service

A.1 The taxable event under the Goods and Services Tax laws (hereinafter referred to as 'GST laws;') is the supply of goods and services. Classification of a supply is essential in order to determine the applicable rate of GST with respect to a particular supply. It is customary that certain transactions would require supply of a combination of services or combination of goods or combination of both goods and services that may be exigible to different rates of GST.

A.2 In view of the above, the determination of classification of a transaction appears to be of utmost importance. The GST laws require that provision of more than one supply is to be classified as either a 'composite supply' or a 'mixed supply'.

A.3 Further, in terms of Section 8 of the CGST Act, the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

"(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated supply of that particular supply which attracts the highest rate of tax."

A.4 The meaning and ambit of composite supply and mixed supply under the GST laws, are discussed in detail in the succeeding paragraphs.

Ambit of composite supply

A.5 The term "composite supply" is defined under section 2(30) of the CGST Act as follows:

"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"

A.6 In light of the above definition, it can be inferred that for a service to qualify as a composite supply, the following conditions are required to be satisfied collectively:

- a. Two or more taxable supplies of goods or services or both;
- b. The supplies are naturally bundled;
- c. The supplies are supplied in conjunction with each other;
- d. The supplies are supplied in the ordinary' course of business; and

e. There is one principal supply.

A.7 Having outlined the above parameters, it is known that the GST law is nascent and constantly evolving. Presently, there does not exist sufficient guidelines under the GST laws for determining whether or not a particular transaction would qualify as composite. However, the concept of composite supply is not novel since it existed under the erstwhile Service tax regime as well.

B. Reference to Service tax laws of the erstwhile regime

B.1 Section 66F of the Finance Act, 1994 ('Finance Act'), dealt with the principles of interpretation of bundled services.

"Section 66F. Principles of interpretation of specified descriptions of services or bundled services.-

(1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled Service shall be determined in the following manner, namely:-

(a) if various elements of such Service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single Service which given such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.- For the purposes of sub-section (3), the expression 'bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.)."

B.2 In light of the above, where a service involves different elements, but which are rendered with a common intent towards provisioning of a main Service, each of those separate elements shall not be classified separately. Those elements should be clubbed together under a common classification which provides the most specific description to all the elements. Applying the synthesis to the instant case, the Applicant offers a compact service of relocating the client's employee from one country' to another. The necessity lies in the complete movement, transfer and settlement of such employee in a new country. Thus, the gamut of services collectively forms the provision of a single supply of relocation of client's employees.

B.3 In order to understand the concept and the principles to determine the scope of bundled services, reliance has been placed on the Taxation of Services, an Education Guide 2012, dated 20 June 2012 (hereinafter referred to as 'Education Guide') issued by the Central Board of Excise & Customs (recently rechristened as Central Board of Indirect Taxes and Customs).

B.4 In Para 2.6.2, the Education Guide clarifies that in cases of composite transactions, i.e. transactions involving an element of provision of service and an element of transfer of title of goods in which various elements are so inextricably linked that they essentially form one composite transaction, then the nature of such transaction would be determined by the application of dominant nature test.

B.5 The Education Guide at para 9.2.4 has prescribed the following indicators regarding the normal and frequent practices which ascertains a service to be considered as a bundle of services:

(i) The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expects such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

(ii) 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.

(iii) 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 or 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.

(iv) The 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

The Education Guide further prescribes that no straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

B.6 On a combined reading of the above and the definition of composite supply under the CGST Act, it is essential to establish that in order to qualify as a composite supply, the different services are naturally bundled to each other and provided in conjunction with each other in the ordinary course of business. Thus, the aggregation of different elements of services when provided in conjunction with a single service gives such service the character of a single supply.

B.7 For instance, an agent supplies a tourism package consisting of air-ticket, hotel room, transport, tourist guide and tour to various sites and he charges a single price. The supply would constitute as a composite supply wherein the main supply is the tour service and the other components are perceived as incidental to the main supply of tour Service.

B.8 In the Applicant's case as well, the dominate intention is the rendition of relocation service in purview of which various other services i.e. visa facilitation, transportation services, temporary hotel accommodation services are rendered. These services are ancillary services directed towards relocating an employee. Applicant advertises and provides these services in form of a package and no individual services are rendered. The client also expects that these services should be provided in a package. Hence, it appears appropriate that these services be classified as a composite supply..

B.9 In addition to above, another important criterion necessary for satisfying the conditions of composite supply is that different services are supplied in the ordinary course of business. The phrase 'in the ordinary course of businesses has not been defined or dealt with anywhere under the GST laws. However, in essence, the said phrase has a very wide meaning, so as to cover any supplies made in connection with a business.

B.10 Given the above, it is established that various elements of services that are naturally bundled in ordinary course of business would qualify as a composite supply. Similarly, in the instant case, different services provided by the Applicant to its clients are naturally bundled with each other since the same are inextricable for provisioning of the principal service of relocation management supplied in ordinary course of Applicant's business.

B. 11 The term 'business' has been defined under Section 2(17) of the CGST Act and includes:

"(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or clause of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) (g) (h) (i)

B. 12 The question, whether an activity or service is rendered in the ordinary course of business or not is for the taxpayer to answer. The Indian judicial authorities, at various occasions, have held that the department cannot

assume the role of a businessman for determining the reasonableness of a business operation. In a judicial pronouncement by the Hon'ble Supreme Court in the case of Commissioner of Income Tax v. Walchand Co. Private Limited 1976] 65 ITR 381 (SC), the Hon'ble Court opined the following:

"In applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the revenue

But it is not the function of the Tribunal to determine the remuneration which in their view should be paid to an employee of the assessee."

B.13 In another ruling, the Hon'ble Delhi High Court in Commissioner of Income Tax v. Dalmia Cements (2002) 254 ITR 377, observed the following:

"The jurisdiction of the Revenue is confined to 'deciding the reality of the expenditure', namely, whether the amount claimed as deduction was factually expended or laid down and whether it was wholly and exclusively for the purpose of the business. The reasonableness of the expenditure could be gone into only for the purpose of determining whether, in fact, the amount was spent. Once it is established that there was a nexus between the expenditure and the purpose of the business, the Revenue cannot justifiably claim to put itself in the armchair of a businessman or in the position of the board of directors and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of the case."

L3.14 Further, in the case of Mysore Fertilizer Co v. Commissioner of Income Tax [1956] 30 ITR 734 (Madras), the Madras High Court observed that it is a settled law that the reasonableness of the payment has to be judged not on the subjective standard of the assessing authorities but from the point of view of commercial expediency, and that in deciding whether remuneration paid to an employee by way of commission constitutes a reasonable expenditure, all the circumstances specifically referred to in the proviso to Section 10(2)(x), judged from the view of a normal prudent businessman, must be taken into account.

B.15 In light of the above income tax judicial pronouncements, it is established that the manner of making commercial decisions have to be judged and decided by a businessman. Applying the above principles to the factual matrix of instant case, it is submitted that the components of different services provided by the Applicant are combined and connected with each other for rendering the Relocation Management Service. The construction of Applicant's business is such that the management of these services constitute a single supply of service that is offered and marketed to the clients. The manner adopted by the Applicant for providing the Relocation Management Service has a commercial expediency of the business and the same cannot be refuted by the department as unreasonable.

C. Global jurisprudence- Meaning of composite supply

C.1 The subject of composite supply has been dealt with globally in terms of the GST/ Indirect tax laws. The concept of composite supply is rich in jurisprudence belonging to various countries and the same has been discussed in subsequent paragraphs:

Australia

C.2 Composite supply under GST laws in Australia means:

"a. supply that contains a dominant part and includes something that is integral, ancillary or incidental to that part. Composite supply is treated as supply of one thing."

C.3 A federal court of Australia, in the case of Commissioner of Taxation v. Luxottica Retail Australia Pvt. Ltd., 2011 FCAF 20, has discussed the scope of supply' and observed that while supply is defined broadly, it nevertheless invites a commonsense, practical approach to characterization. An automobile has many parts which are fitted together to make a single vehicle. Although, for instance, the motor or indeed the tyres, might be purchased separately there can be little doubt that the sale of the completed vehicle is a single supply, lie a motor vehicle, spectacles are customarily bought as a completed article and in such circumstances ae treated as such by the purchaser. The cost that either the frame or the lenses may be purchased separately is not to the point. Similarly, the fact that one component, the lenses, is GST free or that one component is subject to a discount does not alter the characterization.

C.4 Applying the above ruling to the facts of the instant case, it can be inferred that because the independent supplies of services under a la carte program are available, the character of Relocation Management Service as a single supply does not get altered.

C.5 In another judicial pronouncement in the case of Saga Holidays Limited, v. FC of T, 2006 ATC 4841, the Federal Court of Australia, focusing on the economic and social reality of the supply, opined that there is a single

supply of accommodation and the adjuncts to that supply (including the use of furniture and facilities within each room, cleaning and linen services, access to common areas and facilities such as pools and gymnasiums and various other hotel services such as portage and concierge) were incidental and ancillary to the accommodation part of the supply. Similarly, in the present case, the Relocation Management Service is a single supply for relocating the employees from one location to another. Whereas, the other services viz. visa facilitation, transportation service, home search service, temporary living Service etc. are the incidental and ancillary services supplied as part of the Relocation Management Service.

European Union

C.6 As per the European Union directive, a composite supply is a transaction where supplies with different VAT treatments are sold together as one. The supplies with a composite supply may consist of parts that, if assessed separately, have different tax rates. Some have standard rates, reduced rates or are exempt from VAT.

C.7 In a judicial pronouncement of the European Court of Justice (hereinafter referred to as "ECJ") in Card Protection Plan Ltd v. Commissioners of Customs & Excise, European Court Reports 1999 -00973, the ECJ pronounced that a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.

C.8 Even in the instant case, the incidental and ancillary services are provided by the Applicant to the clients, with an aim to provide the Relocation Management Service fulfilling the conditions of managing and facilitating a smooth transition of an employee as prescribed by the RSA (enclosed as Annexure A to the Statement of Facts as enumerated in Annexure I) or the SOW.

D. The Relocation Management Service provided by the Applicant qualifies as a composite supply under the GST Law

D.1 It can be inferred that where a transaction involves supply of two or more different taxable services, but are rendered by a supplier with a common aim or intention, each of the said different services should be construed to be clubbed/ aggregated together to provide the main intent of the supplier. The clubbed services are rendered under a single classification, which provides the most specific description to all the different elements of said service.

D.2 In the instant case, the Applicant under different combination of service packages offers the Relocation Management Service. The services provided under a particular package that fits- the needs of the employee/s most, is availed by the Applicant's client. In case of a typical relocation program, a client would opt or policy counselling, global departure service, immigration service, accommodation service, transport Service, setting in services etc. In addition, depending upon factors i.e. an employee's designation, destination state/country etc., a client may also opt for other services viz. spousal employment assistance, school search Service, language translation service, furniture rental service etc. Thus, these services in toto form the Relocation Management Service.

D.3 In view of the above understanding, the constitution of Relocation Management Service qualifies as the principal supply and other gamut of services qualify as ancillary supplies provided in ordinary course of business. This is in terms of the definition of composite supply provided under the CGST Act.

D.4 Reliance in this regard is also placed on a ruling pronounced by the Advance Ruling Authority, Service tax (hereinafter referred to as 'AAR') (established under the erstwhile service tax regime) in Re: Godaddy India Web Services Pvt. Ltd.2016 (46) S.T.R. 806 (A.A.R.), wherein, Godaddy India was involved in provisioning of various services to Godaddy USA under a service agreement, where it provided a bundle of services in relation to marketing, branding, offline marketing, oversight of quality of third party customer care center etc. The said services were provided by Godaddy India with a sole intention and principal objective of promoting the brand of Godaddy USA in India. The advance ruling application was submitted, inter alia, on whether this gamut of services constituted as a bundled service in terms of Section 66F of the Finance Act. The ruling was pronounced in favour of Godaddy India, wherein the AAR opined that various support services proposed to be provided by Godaddy India to GoDaddy US are a " bundle of services" being naturally bundled in the ordinary course of business and accordingly is a single service, being business support Service, in terms of Section 66F of the Finance Act.

E. Ambit of mixed supply

E.1 The term mixed supply defined under Section 2(74) of the CGST Act, means "two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply"

E.2 A bare reading of the above definition suggests that to qualify as a mixed supply, the supplies shall be individual supplies of goods or services and not naturally bundled in the ordinary course of business. It is

further essential that the said supplies shall not qualify as a composite supply. For example, a supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on each other.

E.3 For the purpose of taxability in the case of mixed supply, it is to be treated as the supply of that particular supply which attracts the highest rate of tax.

E.4 It is relevant to understand that under a mixed supply arrangement, each of the supplies can be supplied separately as the same are not dependent on each other. Further, the identification of the principal supply, which gives the essential character to such bundle, is not possible. The mixed supply is a single supply formed with an aggregation of separately identifiable parts, where these parts are not integral or incidental to a dominant supply.

E.5 However, in the given case, the Applicant is not engaged in rendering of individual and independent supplies of services to its clients. Rather, the services discernable as independent in the RSA/SOW are available as a part and parcel of the programs offered under the Relocation Management Service. Further, the Applicant's nature of business is of assisting clients in relocation of employees. To fulfil the same, a host of ancillary services are provided, i.e. arranging for employees' travel, temporary accommodation in a hotel, visa facilitation charges, etc. However, none of these services are provided on a stand-alone basis. Therefore, supply of Relocation Management Service should not qualify as a mixed supply since the same is composite in nature.

E.6 Thus, under a mixed supply, none of the individual supplies would act as a dominant supply. Reliance in this regard is placed on a ruling of the Administrative Appeals Tribunal, Australia (hereinafter referred to as 'tribunal') In Re Food supplier and Commissioner of Taxation (2007) AATA 1550. In this case, the food supplier sold its food products with a non-food product i.e. mug, clock etc. for the purpose of marketing promotions. The food product and non-food product were sold in a combined package for the price of the food product alone. The question that came for consideration before the Tribunal was whether GST was applicable on the sale of non-food product sold in the combined package. The Tribunal observed that promotional items packaged with food had intrinsic value, would not be consumed with the food and were mostly unconnected with the food item. The Tribunal found that the supply of the promotional items packaged with the food items was a mixed supply. Hence, in such case, it would not be denoted that the food component was the dominant part of the supply and the promotional item was ancillary or incidental to the supply of the food.

E.7 Given the set of facts pertaining to Applicant's business, the above ruling cannot be applied to instant case, since the services provided by the Applicant under the RSA/SOW are inter-connected with each other and cannot be supplied independently.

E.8 Therefore, in the given scenario, the gamut of services provided by the Applicant cannot be denoted as independent of each other since the whole set of services are provided with a view to meet a single supply of Relocation Management Service.

Thus, applying the above principles and observations to the facts of the Applicant's case, it is evident that the Relocation Management Service provided by the Applicant to its clients is a naturally bundled service and should constitute as a composite supply taxable in terms of Section 8(a) of the CGST Act."

6. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri.Harish Bindumadhavan and Ms Disha Gusahaney, Advocates, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

The submissions made by the applicant and the agreement termed as "Agreement for Relocation Services" is examined and found the following points:

6.1 The agreement produced by the applicant shows that:

(a) It is entered between a "company" and the applicant and it is stated that the applicant is engaged in the business of providing or procuring "relocation management services" and the company is interested in retaining Cartus as its agent for the purpose of procuring such services for consideration.

(b) The applicant agrees to act as Company's agent and to provide to or procure for its Company and its Employees, relocation services.

(c) The term "Employee" is defined as any individual designated by the Company as being entitled to the benefits

of the agreement and may include existing employees, job candidates, independent contractors, their respective family members and others.

(d) The term "Initiation" is defined as the time at which the applicant contacts the Employee at Company's request, explains the nature of applicant's services, and through a needs analysis, assists the Employee in selecting the appropriate services and the Employee agrees to accept the applicant's services as envisaged by the agreement.

(e) In Article 3(a) - the applicant understands and acknowledges that it shall be the sole responsibility of the applicant to ensure that the services provided under this agreement or any addendum have been performed appropriately, even if such services have been performed by a Service Partner.

(f) In Article 3(b), it is made clear by the Company that in connection with any service provided or procured by the applicant pursuant to this agreement, the applicant may refer the Employee to various Service Partners and that the applicant may be entitled to receive a fee from such independent providers of services in connection with any such referral. The Company agrees that any referral fee paid by the person to whom the Employee is referred shall be the property of the applicant and neither the Company nor the Employee shall have any right, title or interest therein or thereto.

(g) The applicant agrees to provide or procure relocation management services, but not financial services, from within the legal boundaries of India and to provide relocation management services by placing two of its employees on site at a mutually agreeable Company facility and the Company agrees to provide suitable workspace and facilities to the applicant at no cost to the applicant.

(h) Regarding the agency relationship - it is clearly stated in the Article 13 that the company does appoint the applicant as its true and lawful agent to act for the Company, in their name, place and stead, for the purposes of procuring and making payments on behalf of the Company to third party suppliers who provide services within the scope of the agreement. The applicant will act as a pure agent of the Company to incur certain expenditures and costs and the applicant would neither intend to hold nor would the applicant hold any title to the goods or services so procured as pure agent. The applicant would not use such goods or services so procured and the same shall be directly used by Company or its employees and the applicant would receive from Company on actual amounts incurred to procure such goods or services from Company.

(i) It is also stated that the Company shall enter into Service Agreements directly with third party Service providers providing services within the scope of the agreement, however the third party suppliers will issue / address their invoices to the Company in the name of the Company, but mail the invoices to the applicant for payment processing. In the case the Company is unable to enter into an agreement with the third party suppliers, the applicant will represent to such third party supplier that the applicant is acting in the capacity of an agent for the company and that the company is the principal, who would receive such services and the Company is liable to pay such amount, however payment would be processed by the applicant as agent of the Company.

(j) The applicant shall forward third party supplier invoices to Company with payment notice and company shall provide funds to the applicant less applicable TDS withholding which Company shall promptly remit to the proper authority and the Company will issue a TDS Certificate to the applicant as appropriate. Upon receipt of the funds, the applicant shall make disbursements to third party suppliers less applicable TDS withholdings which the applicant shall promptly remit to the proper authority and the applicant shall issue TDS certificates to third party suppliers as appropriate. The Company shall indemnify and hold the applicant harmless from all claims, liabilities, losses, damages, or expenses, including but not limited to late fees, penalties or interest, associated with, related to or arising out of the service tax or tax withholding, except to the extent caused by the gross negligence or willful misconduct of the applicant.

(k) The Authorised services clause in Article 23 of the agreement reveals that the applicant or its service partners "when requested and authorised, the applicant and/or service provider will provide the following services to the company / its employees" and the applicant will be responsible for co-ordination and management of service partners and any suppliers selected to assist in providing global services". The applicant in all these cases is co-ordinating the providing of services. The Article 24 gives the Fee Schedules for the above services and involves Service Fees plus Direct Costs. It is further stated that in addition to the Service Fees and Direct Costs (which are exclusive of taxes), the Company will be liable for applicable service taxes, cesses and duties levied by the Government of India, or any other State or local authority within India, in connection with the services rendered under this agreement. The applicant will not charge service tax on reimbursement which are incurred in the capacity of a pure agent or service tax would be charged only on the service charges and Direct Costs incurred in the course of providing the services and not on reimbursements.

All the above points in the agreement show that the applicant is only acting as an agent of the Company to which it is providing service and the service is based on the requirement of each of the employee of the Company. The employee of the Company chooses the services required for him and the applicant facilitates the provision of such services and each of the value of the services is fixed by the agreement and separate Service Charges are fixed. Hence there is no common price involved in the entire service and hence is not covered under a single package.

Composite Supply is defined under clause (30) of section 2 of the CGST Act as under:

"(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"

The terms of the contract between the applicant and the Company are verified and found that the actual supply of relocation services is between the third parties to the Company and the invoicing is also done to the Companies by the third parties. The actual liability of paying the consideration is also on the Company and hence the Company is the recipient of service. The supplier of service is the Third Party Service Provider and each of these services may be provided by different Service providers. Hence this cannot be a composite supply, less so in the hands of the applicant. What is provided by the applicant is the not relocation management service but the management support service of relocation related services, which have independent nature. Further, it is seen that even in case where the applicant himself is providing relocation related services called in the agreement as "Authorised Services" then the services are not bundled services as each set of services is provided separately and each service has a separate value and out of the total services, some may be provided by the applicant and some may be outsourced. The billing is done as per the Schedule and includes Direct Cost of such service plus Service Fees plus taxes applicable. Each service has a separate service fees and the services are separately classifiable and if such services are billed in a common invoice that does not amount to a naturally bundled supply and hence the same is not a composite supply.

The mixed supply is defined under clause (74) of section 2 of the CGST Act as under:

"(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.*

The transaction of the applicant is verified and in case where the third parties supplies individual services to the company where invoicing is done to the company directly, the same does not come under services supplied by the applicant in relation to such supply. But where the services are actually supplied by the applicant as "authorised services" by himself to the company, and in case where such multiple services are for a single price, then since such supplies would not constitute a composite supply, the same may be categorized as a "mixed supply".

In all cases, the applicant is facilitating the supply of services and hence would be covered under the definition of "intermediary" as he is an agent of the company and also facilitating the supply of services.

7. In view of the foregoing, we rule as follows

RULING

1. The services supplied by the applicant do not constitute a Composite Supply and would be a mixed supply, when the services are billed for a single price in case where the relocation related services are actually provided by them.

2. The services provided to the company as an agent are "management support services of relocation related services" which is a single service covered under SAC 9985 and is covered under entry 23(ii) of Notification No.11/2017- Central Tax (Rate) dated. 28.06.2017

(Harish Dharnia)

Member

Place : Bengaluru,

Date : 27-09-2019

(Dr. Ravi Prasad M.P.)

Member