

GST : If liaison office in India does not render any consultancy or other services directly / indirectly, with or without any consideration and liaison office does not have significant commitment powers, except those which are required for normal functioning of office, on behalf of head office, then reimbursement of expenses and salary paid by head office to liaison office, established in India, is not liable to GST and head office is not required to get itself registered under GST

- The applicant is the Indian liaison office of a company incorporated at Netherlands.
- The conditions of liaison office are that except proposed liaison work, it shall not undertake any activity of a trading, commercial or industrial nature nor shall it enter into any business contracts in its own name without RBIs prior permission; no commission / fees shall be charged or any other remuneration received by liaison office for the liaison activities; entire expenses of liaison office will be met exclusively out of funds received from board through normal banking channels; liaison office will not render any consultancy or any other services directly/indirectly with or without any consideration.
- The salaries of the employees are remitted by HO to liaison office that further pays the same to the employees working there. The HO also reimburses the other expenses incurred by liaison office for their operation.
- When the liaison office is working as per terms and conditions, the reimbursement of expenses and salary paid by head office to liaison office, is not liable to GST, as no consideration for any service is being charged by liaison office. Further the kind of reimbursement claimed by them from their head office is falling out of the purview of supply of service and as there are no such taxable supplies made by the liaison office, they are not required to get themselves registered under GST.



**[2018] 95 taxmann.com 120 (AAR- RAJASTHAN)
AUTHORITY FOR ADVANCE RULINGS, RAJASTHAN**

Habufa Meubelen B.V., *In re*

NITIN WAPA AND SUDHIR SHARMA, MEMBER
ADVANCE RULING NO. RAJ/AAR/2018-19/05
JUNE 16, 2018

Keshav Malloo, CA *for the Applicant.*

RULING

(A) SUBMISSION OF APPLICANT:

1. M/s. Habufa Meubelen B.V. (hereby referred to as HO), is a company originally incorporated in Netherlands.

1.1 The applicant is the Indian Office of M/s. Habufa Meubelen B.V.(HO) which is established as a Liaison Office at C-36, Raghu Marg, Main Hanuman Nagar, Vaishali Nagar, Jaipur (Raj.) w.e.f. 18.12.2007, with the prior permission of RBI subject to various conditions.

1.2 The conditions of Indian Office of M/s. Habufa Meubelen B. V. are:

- a Except proposed liaison work, the office in India shall not undertake any activity of a trading, commercial or industrial nature nor shall it enter into any business contracts in its own name without RBIs prior permission. No commission/fees shall be charged or any other remuneration received/income earned by the office in India for the liaison activities/services rendered by it or otherwise in India.
- b The entire expenses of the office in India will be met exclusively out of funds received from abroad through normal banking channels
- c The office in India will not render any consultancy or any other services directly/indirectly with or without any consideration The office in India will not have significant/commitment powers, except than those which are required for normal functioning of the office, on behalf the Head Office.
- d The office may approach any AD Category-I Bank in India to open an account to receive remittance from Head Office outside India. Credits to the account shall be the funds received from Head Office through normal banking channels for meeting expenses of the office.
- e All the liabilities in India including arrears of gratuity and other benefits to employees etc. of the branch/office will be met or adequately provided for by HO.

1.3 The liaison office does not have any independent revenue or clients. The office has been established for the purpose of liasoning with the suppliers with regard to quality control of goods. The purchase order or contracts are entered with the clients with the HO and liaison office does not enter into any contract with the clients. Payments for the supplies are made by HO directly to the account of supplier and all the expenses incurred by liaison office is claimed from HO as per clear instructions of RBI.

1.4. The salaries of the employees are remitted by the HO to such office which further pay the same to the employees working there. The HO also reimburses the other expenses incurred by the office for their operation The expenses are in the nature of rent, security, electricity, travelling etc Since, the liaison office do not have any source of income it is dependent on the HO and all expenses incurred by such office are reimbursed by the HO.

1.5. There is no amount charged by liaison office from HO for any services. It seeks only reimbursement of salary and expenses incurred by it from HO. HO is also responsible for payment of gratuity and other benefits of employees, etc.

(B) ISSUE FOR DETERMINATION

2. The questions/issues before the Authority for Advance Ruling (AAR) for determination are:

2.1 Whether the reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V.(HO) to the liaison office established in India is liable to GST as supply of s[^]ndce, especially when no consideration for any services is charged/paid.

2.2 Whether the applicant i.e. the Liaison Office is required to get registered under GST?

2.3 If it is assumed that the reimbursement of expenses and salary claimed by liaison office is a consideration towards a service, then what will be the place of supply of such service?

(C) SUBMISSION BY THE APPLICANT

3. The applicant has submitted the following submissions in their support,

3.1 There is no flow of services and there is no consideration flowing between HO and Liaison Office, as per Section 9 of the CGST Act 2017 GST is not applicable on any transaction which is not covered under the scope of the term supply' as defined in Section 7 of CGST Act. 2017.

3.2 In order to be a supply' liable to GST, an activity has to fall under Section 7 of the CGST Act, 2017 which reads as under:

7.(1) For the purposes of this Act. the expression "supply" includes—

- (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be **made for a consideration** by a person in the course or furtherance of business;*
- (b) *import of services for a consideration whether or not in the course or furtherance of business;*
- (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

3.3 Further "services" has been defined in Section 2(102) of the CGST Act, 2017 which says that "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.**

3.4 A perusal of definition of 'service' shows that to be a 'service' under GST law there has to be charging of separate consideration. If there is no separate consideration charged then it would not qualify as '**service**'. Similarly, a perusal of definition of the term supply shows that consideration is one of the essential ingredients to be a supply.

3.5 Reading the definition of 'service' and 'supply' in harmony, a conclusion can be drawn that a supply of service can be liable to GST only if a separate consideration is charged. If there is no consideration then it would not be liable to GST. In the present context, there is no consideration charged by applicant from the HO in foreign country for any services. There is no amount received from HO except the funds for payment of salary, reimbursement of expenses like rent, security, electricity, travelling, etc., therefore the same is not a supply of service under GST law in absence of charging of consideration.

3.6 As mentioned in the facts itself that the liaison office does not have any independent revenue or clients. The office has been established for the purpose of liaising with the suppliers for quality control. Further the liaison office is set up only to represent the interest of the head office in Netherlands. Therefore, they are not separate person. The liaison office as such is prohibited to undertake any other activity other than that those incidental and related to the liaising with the suppliers for quality control. The applicants are merely an executing arm of the head office and do not have resources to carry on the business activity. From this it can be safely concluded that the liaison office does not have independent existence of their own. Head office and the liaison office are the same entity and the liaison office do not have any entity of their own, thus there cannot be a flow of services inter-se the liaison office and head office as it amounts to service to one self.

3.7 The HO, Netherlands reimburses the other expenses incurred by the applicant for their operation. The expenses are in the nature of salary, rent, security, electricity travelling etc. Since the applicant do not have any source of income it is dependent on the HO and all expenses incurred by the applicant are reimbursed by the HO. For this reason also the HO and Liaison Office cannot be treated as separate persons. Since, HO and Liaison Office cannot be treated as separate person, there cannot be any flow of

services between them as one cannot provide service to self and therefore, the reimbursement of expenses made by the HO cannot be treated as a consideration towards any service.

3.8 As regards the requirement of getting registered under GST, the requirement of registration under that Act is governed by the provisions of Section 22 of the CGST Act, 2017 which provides that

"every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his e turnover in a financial year exceeds twenty lakh rupees.

And the liaison office is strictly prohibited to undertake any activity of a trading, commercial or industrial nature nor it is entering into any business contracts in its own name. Further, the reimbursement claimed by them from their HO is also falling out of the purview of supply of service. Therefore, there is no taxable supplies made by the Liaison office and hence, there is no requirement of getting registered under Section 22. Further, applicant is not falling under any of the category of persons specified under Section 24 for obtaining compulsory registration under the Act. In view of the above interpretations of the provisions, applicant understands that they are not liable for obtaining registration under GST.

(D) Issues to be decided:

4.1 Whether the reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V.(HO) to the liaison office established in India is liable to GST as supply of service, especially when no consideration for any services is charged/paid.

4.2 Whether the applicant i.e. the Liaison Office is required to get registered under GST?

4.3 If it is assumed that the reimbursement of expenses and salary claimed by liaison office is a consideration towards a service, then what will be the place of supply of such service?

(E) Personal Hearing:

5.1 Personal hearing in the matter was given to the applicant on 18/05/2018 wherein Mr. Keshav Malloo, CA and authorised representative appeared on behalf of the applicant and he reiterated the submissions already made vide their Advance Ruling application dated 22/03/2018. He requested for decision on the case as per his submissions.

(F) Findings:

6.1. As submitted by the applicant, they are working as the Indian Office of M/s. Habufa Meubelen B.V. which is established as a Liaison Office with the prior permission of RBI. Except proposed liaison work, this office in India would not undertake any activity of trading, commercial or industrial nature nor would they enter into any business contracts in its own name without RBIs prior permission. There is no commission/fees being charged or any other remuneration being received/income being earned by the office in India for the liaison activities/services rendered by it.

6.2 The HO, Netherlands reimburses the expenses incurred by the applicant for their operations in India which are in the nature of salary, rent, security, electricity, travelling etc. The applicant does not have any other source of income and it is solely dependent on the HO for all the expenses incurred by the applicant, which are subsequently reimbursed by the HO. Therefore the HO and Liaison Office cannot be treated as separate persons. Since, HO and Liaison Office cannot be treated as separate persons, there cannot be any flow of services between them as one cannot provide service to self and therefore, the reimbursement of expenses made by the HO cannot be treated as a consideration towards any service.

6.3 The amount received from HO are the funds for payment of salary, reimbursement of expenses like

rent, security, electricity, travelling, etc. No consideration is being charged by the applicant from the HO for such services.

6.4 Further the liaison office is strictly prohibited to undertake any activity of trading, commercial or industrial nature or entering into any business contracts in its own name. Also the reimbursement claimed by them from their HO is also falling out of the purview of supply of service. As there are no taxable supplies made by the Liaison office, they are not required to get registered.

6.5 In view of the submissions made by the applicant and as discussed in above paras, when the applicant/liaison office is working as per the terms and conditions as mentioned under para 1.1 to 1.5 above, the reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V to the liaison office, is not liable to GST, as no consideration for any **services is being** charged by the liaison office. Further, the kind of reimbursement claimed by them from their HO is also falling out of the purview of supply of service and as there are no such taxable supplies made by the Liaison office, they are not required to get themselves registered under GST.

6.5 In view of the foregoing, we rule as under:

RULING

If the liaison office in India does not render any consultancy or other services directly/in directly, with or without any consideration and the liaison office does not have significant commitment powers ,except those which are required for normal functioning of the office, on behalf of Head Office, then the reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V. (HO) to the Liaison Office, established in India, is not liable to GST and the applicant i.e. M/s Habufa Meubelen B.V. Jaipur, is not required to get itself registered under GST.

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