

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAHFL9362K1ZQ
Legal Name of Applicant	Lear India Engineering LLP
Registered Address/Address provided while obtaining user id Corresponding Address	Gat.No. 426/6/7,8,9, Chakan-Talegaon Road, Mahalunge, Pune, 410501 Lear Corporation, 2nd Floor, E-25,26,27 , MIDC, Bhosari, Pune, Maharashtra, 411026
Details of application	GST-ARA, Application. No. 25 Dated 09.07.2019
Concerned officer	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision , Service Recipient
B Description (in brief)	Services provided for conduct of examination
Issue/s on which advance ruling required	(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as the CGST Act and MGST Act"] by M/s. Lear India Engineering LLP, the applicant, seeking an advance ruling in respect of the following questions.

- 1. Whether the design & Development services provided by Lear India to Lear entities situated abroad would amount to Export of service.**
- 2. Whether the design & Development services provided by Lear India to Lear entities situated aboard would fall under the category of OIDAAR services.**

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 any dissimilar provisions, a reference to the CGST Act would also mean a

reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to “GST Act” would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant are as under:-

2.1 Lear India Engineering LLP (hereinafter referred to as “Applicant”) is engaged in providing research and development services in respect of various automotive applications to its overseas group companies.

2.2 The subject application is filed in respect of the Technical services provided by Applicant in respect of seating systems and electronic control units to service recipients situated outside India. Applicant entered into a technical assistance agreement with the other Lear entities situated abroad as per which, the Applicant is required to perform activities such as engineering, R&D and technical assistance including advanced product and process development, product design and product engineering. The intangible that are developed as a result of these activities are owned by the Service receiver and in consideration for providing such services, the Applicant is charging based on the number of hours spent along with certain agreed reimbursements.

2.3 Applicant has bifurcated the activities performed in lieu of the aforementioned agreement into two divisions, namely:

- Seating Division; and
- E-Systems Division.

2.4 In the Seating Division, the Applicant carries out development of design of seats and seat parts as per the requirement of the customer. Applicant's team conceptualizes the design & drawing or technical illustrations in computer environment using various computer software including Computer Aided Design software upon completion of which, the Applicant checks whether such design meets the requirement of the customer or not. For this, Applicant uses computer graphic simulation technologies which enables the Applicant to create 3-D graphic simulations that replaces fabricated prototypes. The entire testing is carried out in virtual environment, no prototypes are ever received from the service receiver for testing purposes. Once the design is tested and approved in India, the same is stored on the server of the customer for verification and approval. In case the customer has any suggestions, comments, etc. the design is again modified by the Applicant and above referred process is reiterated. Once the design is finally approved by the customer, the activity of Applicant is concluded. In the subject case there is no import

of prototype from the service receiver for testing purposes. This activity was being treated by the applicant as export of service under the Service Tax Laws.

2.5 In the E-Systems Division, applicant develops Electronic Control Units ("ECU") as per the requirements of its customers. ECU is a composite box which controls various electronic functions of the car such as power window, audio system, wiper, auto lock, lighting, etc. These are embedded systems and control the electrical sub-systems that are present in a transport vehicle. On receipt of orders from Original Equipment Manufacturers (OEM) to develop ECU, the concerned Overseas Lear entity places back to back orders to different Lear entities (including the Applicant) for developing software for each of the operations which are controlled by ECU as mentioned above. Generally, the whole work is divided among multiple entities depending upon their available capacity to ensure that the development of ECU is completed in a defined timeline as per the requirement of the end customers. Out of the entire lifecycle for development of integrated software, initial 5-6 weeks are attributed towards development of function specific software by each Lear entity including the Applicant who are participating in the development project. Upon completion of the function specific development of software, the last 2-3 weeks are allocated for verification of functioning of integrated software and its compatibility with the hardware on which it would be loaded. During the process of development of functional software, post conceptualizing the software. i.e. after completion of writing of the software codes, the Applicant does carry out the testing of the software to verify the accuracy of software. The said testing is done in the computer system only, without the help of any external hardware. Then the function specific software developed in India is uploaded on the server of Lear upon successful testing thereof. Similarly, other Lear entities which are assigned the task to develop software in respect of other functions of ECU also carry out the development of software which is allocated to them and the said patches of the software for other functions are also uploaded on the common server of Lear.

The above said process of development of function specific software is explained with the help of example hereinafter:

Example:

In case of developing software for an ECU, Applicant is assigned the task to develop software pertaining to power window. Similarly, other Lear locations are assigned the task of developing software for wiper, steering, audio system, auto lock, lighting, etc. The respective Lear locations including the Applicant would upload the functional software developed by them on the common server within the defined timeline agreed.



Once the functional software developed by each Lear entities are uploaded on the Lear server, the said software is integrated together by the overseas Lear entity which has placed order with other Lear entities. Such integration of all the functional software is important to test their performance and identify the problems if any faced in the interface between such functional software after integration. The integrated software is thereafter uploaded on the Lear server which is downloaded by each location who have developed the functional software. Thereafter, such integrated software is loaded on a hardware i.e. ECU which is supplied by overseas Lear entity, to carry out the testing of respective functional software in the overall integrated software. Further, the purpose of sending the common hardware to all the Lear locations is to provide the uniform platform on which the software is to be uploaded for testing purposes. The applicant neither has the capacity nor undertakes any testing operations on the hardware so supplied by its customer. The whole purpose of sending the hardware to provide uniformity in the platform on which the entire software has to work once it is installed in the vehicle. This activity was also treated by the Applicant as export of service under the Service Tax Laws.

2.6 The applicant has made various submissions to state that the present services fall under the purview of "Export of Services" and thus seeks the present advance ruling to understand whether the present services provided by the Applicant would fall under "Export of service" under the GST laws.

2.7 Vide letter dated 23.01.2020 Applicant has submitted that it is withdrawing the first question posed in its Advance Ruling Application i.e. Whether the design & development services provided by Lear India to Lear entities situated abroad would amount to Export of service?, since the same would require a discussion on the place of supply of services, which is outside the purview of this Authority

2.8 The second question raised is whether the design & Development services provided by Applicant to Lear entities situated abroad would fall under the category of OIDAR services.

2.8.1 The applicant has submitted that the subject services are not in the nature of OIDAR services and would rather qualify as consulting engineer services. Applicant has submitted various reasons in support of their contention that the present services rendered by them is Consulting Engineer Services and not OIDAR. It is also submitted by the applicant that the department had issued a SCN dated 27.08.2018 proposing to classify the services of the Applicant under "On-line database access services" wherein the SCN has alleged that the services provided by the Applicant is bundled service of design, prototype, testing in virtual world through computer network and online database access gives the essential characteristic of OIDAR to the said bundled service. The applicant has also



submitted that the second question falls directly under the category of classification of any goods or services or both and since the said question falls under Section 97(2)(a) of the CGST Act, 2017, the present application should be admitted and accepted by this Authority.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER

The submissions of the jurisdictional office are as under:-

- 3.1 This advance ruling is sought to ascertain whether the Technical services provided by the Applicant should be treated as an "Export of Services under the GST Regime?"
- 3.2 The jurisdictional officer has referred to the provisions of Section 2(6) of the IGST Act and the relevant provisions of Section 13 of the IGST Act. It is submitted that in the given case, the services carried out by Applicant are performance based and the activities performed in the seating division would squarely fall under the provisions of the Section 13(2) of the IGST Act. It is also submitted that the activity carried out in the E- systems division of Applicant is confined to the development of software and is integral part of overall software development undertaken by Applicant. Consequently, the general rule provided under sub-section (2) of Section 13 of the IGST Act would be applicable and the POS would be the location of the service recipient. In the given case, since the location of recipient of services is outside India, it can be construed that the POS for the services performed by Applicant is outside India. The jurisdictional officer has also submitted contention to state that the present services cannot be said to fall under the category of OIAR services and even if they are classified as OIAR services they would qualify as export of service under the GST regime. The jurisdictional officer has concluded that, it is clear that the present transaction undertaken by Applicant is cumulatively satisfying all the conditions provided for 'export of service and therefore, the Technical services provided by the Applicant would qualify as 'export of services'.



04. HEARING

Preliminary hearing in the matter was held on 20.11.2019. Sh. Arpit Pushp Chaturvedi, Advocate, along with Sh. Sandip Sachdeva, Advocate and Sh. Sanjay Bhalerao, employee of the applicant, appeared and requested for admission of their application. Jurisdictional Officer Sh. S. S. Umrani, State Tax Officer (PUN-VAT-C-305) Pune also appeared.

The application was admitted and called for final hearing on 07.01.2020, Sh. Arpit Pushp Chaturvedi, Advocate, along with Sh. Sandip Sachdeva, Advocate and Sh. Sanjay Bhalerao, applicant appeared and made oral and written submissions. The case was kept

reserved for submissions from applicant. The Jurisdictional Officer Sh. S. S. Umrani, State Tax Officer (PUN-VAT-C-905) Pune appeared and made written submissions.

Applicant made final written submissions vide letter dated 23.01.2020 and was called for hearing on 06.02.2010. Sh. Sandip Sachdeva, Advocate appeared and made oral submissions.

05. OBSERVATIONS

5.1 We have gone through the facts of the case, documents on record and submissions made by both, the department as well as the jurisdictional officer.

5.2 A letter dated 23.01.2020 was submitted by applicant, wherein it was requested that they may be allowed to voluntarily withdraw the first question made in the subject application. The request of the applicant to withdraw the first question of application voluntarily and unconditionally is hereby allowed, without going into the merits or detailed facts of the case.

5.3 The second question raised in the application is whether the Design & Development services provided by the Applicant to Lear entities situated aboard would fall under the category of OIDAR services. Prima facie this is a question pertaining to classification and is covered by Section 97(2)(a) of the CGST Act, 2017.

5.4 We find, from the submissions made by the applicant, that the subject services are presently being classified by them as 'Consulting Engineering Services'. However, the GST department has issued them a Show Cause Notice 27.08.2018 proposing to classify the services of the Applicant under "On-line database access services" wherein the SCN has alleged that the services provided by the Applicant is bundled service of design, prototype, testing in virtual world through computer network and online database access gives the essential characteristic of OIDAR to the said bundled service.

5.5 In light of the facts mentioned at 5.4 above, we feel that a reference is required to be made to the provisions of Section 98 of the CGST Act, which is reproduced below:-

Section 98 of CGST Act 2017: Procedure on Receipt of Application (CHAPTER XVII – ADVANCE RULING)

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records: Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:



Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

- (3)
- (4)
- (5)
- (6)
- (7)

5.6 In view of the provision to Section 98(2) of the CGST Act, 2017, we find that this authority cannot admit the application in respect of this question because the question raised in the application is already pending before the department under the provisions of this Act as is seen from the SCN issued to the applicant on 27.08.2018.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 25/2019-20/B-

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Mumbai, dt. 25/02/2020

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1- Whether the design & Development services provided by Lear India to Lear entities situated abroad would amount to Export of service.

Answer :- This question has been voluntarily withdrawn by the applicant.

Question 2- Whether the design & Development services provided by Lear India to Lear entities situated abroad would fall under the category of OIDA services.

Answer :- This question is not admitted in view of the provisions of Section 98 (2) of the GST Act.



—sd—
A. A. CHAHURE
(MEMBER)

—sd—
P. VINITHA SEKHAR
(MEMBER)

CERTIFIED TRUE COPY

A. A. Chahure
MEMBER

**ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI**

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021.

