

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 Five Star Shipping, the applicant, seeking an advance ruling in respect of the following question :

- A.1 *Whether Marine Consultancy Service (“MCS”) provided to foreign ship owners constitutes “composite supply” with the principal supply of consultancy service?*
- A.2 *Whether the place of supply of MCS (as a composite supply) will be determined in terms of Section 13(2)(a) of the Integrated Goods and Services Tax, 2017 (“IGST Act”), i.e. the ‘location of recipient of service’?*
- B.1 *In the alternate, where services are provided to foreign ship owners distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:*
 - a. *Whether consultancy service will qualify as business consultancy service in terms of the scheme of classification of services [Annexure to Notification 11/ 2017 – Central Tax (Rate), dated 28th June, 2017]?*
 - b. *Whether the place of supply of such consultancy service will be the ‘location of recipient of service’ in terms of Section 13(2)(a) of the IGST Act?*



- c. Whether support service qualifies as “intermediary service” in terms of Section 2(13) of the IGST Act? And, if ruled that the support service qualifies as an intermediary service, the place of supply of support service as intermediary service will be the ‘location of supplier of service’ in terms of Section 13(8)(b) of the IGST Act?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the “GST Act”.

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

“ANNEXURE I

Statement of the relevant facts having a bearing on the question raised

1. **Five Star Shipping (“Applicant”)** is a partnership firm in terms of (Indian) Partnership Act, 1932. Its office is located in Mumbai (State of Maharashtra). Its partnership deed *inter alia* records that the partnership business shall be that of consultants.
2. The service provided by the Applicant includes collecting market intelligence and updates which is disbursed to the ship owners (i.e. consultancy service), as the principal service. Service provided by the Applicant also includes providing support service to Indian/ foreign ship owners to identify charterers outside India who are seeking to optimise revenue for their vessels and monitoring voyage execution, as the ancillary service. Consultancy service and the consequential support service provided by the Applicant is generically referred to as Marine Consultancy Service (“MCS”).
3. MCS is provided by the Applicant in terms of a Consultancy Agreement executed by and between the Applicant and the ship owners. Details of service provided by the Applicant in terms of such Consultancy Agreement are provided below:
 - i. As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to the company.
 - ii. Track, collate, analyse and monitor port development and logistics data originating from reliable source and update future trends
 - iii. Monitor world-wide economic development, bulk commodity trade pattern development
 - iv. Identify and provide information on port costs, bunker (fuel), trend, cost estimation and analysis
 - v. Monitor voyage execution for smooth and efficient operations so as to optimize performance for the ship owners.
 - vi. Examine lay time calculations and arrange for accounts reconciliation for objective of eventual settlement.
 - vii. Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, global and regional economic development and analysis
 - viii. Techno commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict, any other causes which have prospects to impact trade
4. Fees for the abovementioned services is fixed pre-hand, and typically is a percentage of the gross revenue earned and received by the foreign/ Indian ship owner as the case may be. A sample Consultancy Agreement dated 01 March, 2017 entered between the Applicant and foreign ship owner Singapore Shipping International Pte. Ltd. (“the Agreement”) is attached as **Enclosure 1**. The tax position, as applicable under the erstwhile (pre-GST) regime must be appreciated and understood in the context of these facts and commercial circumstances to enable a considered conclusion under GST regime and law.

Tax treatment prior to GST

5. The Applicant had obtained Service Tax registration as per the erstwhile indirect tax regime in the State of Maharashtra. MCS service provided by the Applicant to foreign ship owners and Indian ship owners qualifies as Business Auxiliary service (“BAS”) in terms of Chapter V of the Finance Act, 1994 (“the Act”). Hitherto, MCS provided by the Applicant was treated as bundled service comprising of consultancy service and support service, wherein consultancy service was the principal service giving essential characteristics to MCS. These services did not qualify under specific rule of the Place of Provision of Service Rules, 2012 (“PPSR”) and therefore, Rule 3 of the PPSR which is the default rule under the PPSR was applicable. As per Rule 3 of PPSR, the place of provision of service was ‘the place of recipient of service’. Detailed analysis of tax treatment prior to GST is set out at para 27 to 33 of Annexure II).
6. The Applicant is providing MCS to both Indian and foreign ship owners. There is clarity regarding the GST implication on service provided to Indian ship owner as both provider and recipient of service are located in India however, there is inadequate clarity regarding the GST implication on services provided to foreign ship owners (located outside India). Therefore, the Applicant has approached the Authority *re* MCS provided by the Applicant to foreign ship owners. Consequently, the following discussions are solely in respect of Applicant’s MCS supplied to foreign ship owners.

Relevant legal provisions of the Goods and Services Tax regime, collection and scope of ‘supply’



7. Per Section 9 of the Central Goods and Services Tax ("CGST Act"), a tax called the Central Goods and Services Tax ("CGST") is to be levied on the intra-State 'supplies' of goods and services. The term 'supply' is defined in Section 7 of the CGST Act to include:
- "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;"*
 -
 - ; and
 - the activities to be treated as supply of goods or supply of services as referred to in Schedule II."*

Relevant definition as set out in CGST Act and IGST Act

- Section 2(30) of the CGST Act defines the term 'composite supply' to mean *"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"*.
- Section 2(74) of the CGST Act defines the term 'mixed supply' to mean *"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"*.
- In terms of Section 2(13) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act") defined 'intermediary' to mean *"a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account"*
- In terms of Section 2(6) of the IGST Act, export of services means *"the supply of any service when,

 - the supplier of service is located in India;
 - the recipient of service is located outside India;
 - the place of supply of service is outside India;
 - the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8"*

Place of supply of service as set out in Chapter V of the IGST Act

- In terms of Section 12(2)(a) of the IGST Act, which is the default rule for determining the place of supply of services where the location of supplier and recipient is in India, *"the place of supply of services, except the services specified in sub-sections (3) to (14), made to a registered person shall be the location of such person."* In other words, the place of supply of service shall be the location of recipient of service.
- Default Rule:** In terms of Section 13(2) of the IGST Act which is the default rule for determining the place of supply of services where the location of supplier or location of recipient is outside India, *"the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services."*
- Intermediary service:** Section 13(8)(b) of the IGST Act provides the place of supply of intermediary service where the location of supplier or the location of recipient is outside India. As per Section 13(8) of the IGST Act, place of supply of intermediary service *"shall be the location of the supplier of services"*.

Scheme of classification

- Scheme of classification of services is provided in Annexure to Notification 11/ 2017 – Central Tax (Rate), dated 28th June, 2017. The Annexure classifies services into Chapter, Section, Heading and Groups and provides a unique 6 digit Service Code to each service. The Annexure also provides description of service and supports in determining the nature of service and rate of GST payable *qua* a service."

ANNEXURE II

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the question

A. Interpretation of law and facts

- MCS provided by the Applicant constitutes of consultancy service and support service. Consultancy service provided by the Applicant includes analysing commodity, shipping and freight market, finding potential charterers for the foreign ship owners. Such supply of consultancy service to the foreign ship owners constitutes a substantial portion of the Applicant's business. For this the Applicant has trained professional research analysts stationed at its office who keep them abreast with market trends and help the foreign ship owners with valuable information *re* their business. The Applicant has appointed research analysts on the payroll to undertake market research, track, collate, analyse and monitor port development and logistics data to update future trends to ship owners and also customise this information as per the customer's needs e.g. the type of vessel, cargo carrying capacity, free space available on the board of the vessels.
- MCS supplied by the Applicant also includes support service provided to the foreign ship owners which largely consists of optimising global trade and revenue therein for the foreign ship owner. For this, the Applicant relies on the database of information maintained by the Applicant. Further, the support service supplied by the Applicant includes monitoring voyage execution for the ship owners for smooth and efficient operations to optimize performance of their ships, examines lay time calculations, and arranges for reconciliation of accounts with the objective of eventual settlement with the charterers. The support services provided by the Applicant are provided to the foreign ship owner and are not meant to facilitate two parties.
- The Applicant's engagement with the foreign ship owners is not limited to finding potential charterers for their vessel but is initiated way earlier by way of continuously providing essential market intelligence which adds value for the foreign ship owners in their business and is continued with the Applicant monitoring the supply of service by foreign ship owner to ensure efficiency of provision of service. Thus, supply of both consultancy service and support service are bundled together in the form of MCS.
- The Applicant is not a conduit between the ship owners and the charterers. The Applicant originates, orchestrates and manages the supply of providing market intelligence leading to potential business and monitoring the supply of service by the ship owner to the charterer to ensure smooth and efficient operations of the ship owner's ships, and also arranging reconciliation of the accounts of the foreign ship owners which helps in eventual settlement with the charterers. Reference in this regard may be made to para 1 of the Agreement which provides that *"the implantation of such value-based and market driven advisory service is expected lead to increased cargo volumes, and the support from the Consultants will provide the Company (foreign ship owner) with long term sustainable revenue."*
- The MCS is provided independently by the Applicant at the request of and in satisfaction of the customer's requirements. Reference in this regard may be made para 1 of the Agreement extracted below:

"It is expressly understood that the consultant has fiduciary obligation to "the Company" (foreign ship owner) based on contractual terms of this Agreement; that Consultant's role is to provide independent advice uninfluenced by commercial concerns; and that service as a Consultant does not require him to be an advocate for "the Company" or its products in any forum, public or private."



6. Therefore, it is evident from the terms of the Agreement that supply of MCS by the Applicant is on its own account and the Applicant orchestrates the entire service directly to the foreign ship owners. The foreign ship owners approach only the Applicant in case there are any issues that need to be addressed or ironed out and the Applicant remains answerable to the ship owners from the point of entering into the contract for supply of MCS. Consequently, a significant as also certain degree of service is provided by the Applicant directly to and quite clearly directed at the foreign ship owner.
7. The services supplied by the Applicant are described in para 3 of Annexure I and may be referred to understand that the entire gamut of services supplied by the Applicant. Each service listed therein may be provided by the Applicant in isolation and there is no requirement to avail all the services supplied by the Applicant and it is the ship owner's prerogative to avail all or some of the services offered by the Applicant. It is on the request of the foreign ship owners that the services are supplied in a cohesive manner, as a single offering. Typically, the Applicant is equipped to supply consultancy service and support service distinctly and occasionally does provide the services separately. However, it is practical for the foreign ship owner to avail both services offered by the Applicant as a bundle to increase effectiveness and for cost economies. Provision of consultancy service by the Applicant helps the foreign ship owner to zero in on a suitable charterer, which in turn leads to provision of service like tracking of voyage and assistance in billing by the Applicant. It is only on the request of the foreign ship owner that the two services are offered together. In return, the Applicant charges a fee which is a fixed percentage of gross revenue of charter hire earned by the foreign ship owner which is pre-decided between the Applicant and the foreign ship owner.

1. MCS supplied by the Applicant will qualify as a composite supply with consultancy service as the principal supply

8. From 01st July, 2017 (GST regime), all forms of supply of service made for a consideration by a person in the course of furtherance of business qualifies as supply which is liable to GST in terms of Section 7(1)(a) of the CGST Act. Further, where two or more services are provided by a supplied in conjunction, GST law has introduced the concepts of composite supply and mixed supply. A composite supply means a supply of two or more services which are 'naturally bundled' and supplied in conjunction with each other in the ordinary course of business, one of which is the 'principal supply'. A mixed supply is the supply of two or more services made in conjunction with each other by a taxable person for single price where such supply does not constitute a composite supply.

Supply of MCS is a composite supply

9. The concept of composite supply is similar to the concept of naturally bundled service under the erstwhile negative list regime. A composite supply is defined in Section 2(30) of the CGST Act as below:
"Section 2(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"
10. Supply of MCS by the Applicant consisting of consultancy service and support service will be construed as a supply of composite service made by the Applicant as these services (i.e. consultancy service and support service) are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which (i.e. consultancy service) is the principal supply.
11. As stated in Annexure I, the Applicant's activities of supply of MCS to foreign ship owners comprises of collecting intelligence on commodity shipping and freight market, track movement of ships, maintain information about the ports and the facilities provided the ports, monitor trade pattern and disseminate the information to foreign ship owners. MCS constitutes consultancy service provided to foreign ship owners as a specialist in the freight market and support service provided to the monitor voyage execution, examine lay time calculations, etc. These services are provided in conjunction and as a bundle by the Applicant which in turn augments the capacity of foreign ship owners to serve clients globally.

Supply of MCS is not a mixed supply

12. When two or more individual services are supplied in conjunction with each other for a single price and where such supply does not qualify as a composite supply, such supply is classified as a mixed supply. From the discussion in the foregoing para of this application, it is evident that consultancy service and support service supplied by the Applicant is naturally bundled and are supplied in conjunction in the ordinary course of business. Consequently, given that Applicant's service qualifies as a composite supply of service, the service does not qualify as a mixed supply in terms of CGST Act.

Consultancy service is the principal supply in the composite supply

13. The Applicant is providing composite service comprising of consultancy service and support service. As a part of consultancy service, the Applicant collects market intelligence for which it hires trained professionals abreast with market, etc. Such market intelligence helps the Applicant in identifying possible charterers for their clients who are foreign ship owners who are seeking to optimise revenue for their vessel. Relying upon the information received from the Applicant, the foreign ship owners contact the charterers to discuss the provision of their service and the terms on which the service will be supplied. Therefore, the consultancy service is essential for the foreign ship owners to successfully enter into a service contract.
14. Following the agreement for provision of service between the foreign ship owner and the charterer, the other part of the MCS i.e., the support service is provided by the Applicant to the foreign ship owner. Thus, provision of consultancy service precedes the provision of support service. The Applicant in all cases in contacted by the foreign ship owner for providing consultancy service and is thereon brought involved for provision of support service. In view of this, consultancy service provided by the Applicant to the foreign ship owner is the principal supply in the composite supply MCS.
15. Owing to this, the place of supply of MCS (with consultancy service as the principal supply) when provided to foreign ship owner shall be the 'location of the recipient of service' in terms of Section 13(2)(a) of the IGST Act (i.e. the default rule), as supply of MCS does not qualify in the specific place of supply rules prescribed under Section 13 of the IGST Act. **Therefore, when MCS as composite supply (consisting of consultancy service and support service) is supplied by the Applicant from India to a foreign ship owner, the place of supply of service will be the location of the foreign ship owner located outside India. Resultantly, no GST is payable on this transaction and the transaction will qualify as export of service** subject to fulfilment of criterion prescribed in this regard under Section 2(6) of the IGST Act. As the Applicant is able to satisfy the abovementioned criterion, supply of MCS by the Applicant to the foreign ship owner is an export of service.

MCS does not qualify as an intermediary service



16. In mode of assumption, if support service provided by the Applicant to the foreign ship owner is seen as a principal supply, support service cannot be an intermediary service and therefore MCS in entirety cannot be an intermediary service.
17. Supply of support service as a part of the MCS by the Applicant is not an intermediary service in terms of Section 2(13) of the IGST Act, extracted below:
"Section 2(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."
18. When the Applicant is providing support service under MCS, one may perceive support service as an intermediary service because (a) the applicant is engaged in identifying and then suggesting a potential charterer for the foreign ship owners; and (b) Revenue from MCS service supplied by the Applicant is earned upon successful completion of voyage. Resultantly, it may be argued that essence of the supply of MCS is to arrange and facilitate supply of service between the charterer and foreign ship owner; this is because If supply of consultancy service is successfully completed but the Applicant is not able to find a charterer for the foreign ship owner, no fees will accrue to or paid to the Applicant. In view of the above, support service provided by the Applicant to the foreign ship owners may be construed as 'intermediary service' in terms of Section 2(13) of the IGST Act.
19. Intermediary service provided by the Applicant along with consultancy service may qualify as naturally bundled service supplied in conjunction and together the service may be deemed as a composite supply in terms of Section 2(30) of the CGST Act. In this case, intermediary service may well be considered as the principal supply and the place of supply of service will be determined in terms of Section 13(8)(b) of the IGST Act which provides the 'location of supplier of service' as the place of supply. Resultantly, the place of supply of MCS (comprising of support service and intermediary service) will be the location of the Applicant in India and the transaction could be subjected to GST.
20. However, practically the Applicant under an agreement with the foreign ship owner supplies the following services:
- The Applicant is continuously engaged in consultancy service and time-to-time reports from such consultancy is shared with foreign ship owners.
 - The Applicant recommends potential charterer to the foreign ship owners. These ship owners independently enter into an agreement with the charterers for transportation of goods by vessel, post negotiating terms of supply of service.
 - Once the foreign ship owner and the charterer concludes an agreement for transportation of goods by vessel, the Applicant steps back and supports the foreign ship owner in monitoring the voyage, calculating lay time and reconciling accounts which benefits the foreign ship owner in the settlement of fee between the foreign ship owner and the charterer.
21. Therefore, the Applicant is only introducing the foreign ship owner and the potential charterers which may be one or more than one in number. The foreign ship owner is at liberty to choose from the recommended charterers, negotiate the terms of supply of service. The foreign ship owners may decide not to provide service to any of the charterers recommended by the Applicant. The Applicant is neither arranging nor facilitating the supply of service between the foreign ship owner and the charterer. The role ends at the time of introduction of two parties (i.e. foreign ship owner and the charterer) and resumes once an agreement is signed between them, to ensure smooth voyage and settlement of payment. The supply of service by the Applicant is on its own account and directly to the foreign ship owner. Applicant has neither the wherewithal, nor the intent to deal with the charterer.
22. The contract between the foreign ship owner (located outside India) and the charterer (located outside India) is negotiated by electronic means and executed outside India. The Applicant is involved by the foreign ship owner only at the stage of execution of the services (contractually agreed between the foreign ship owner and the charterer) in order to support the foreign ship owner in smooth provision of its service.
23. The essential elements of a supply to qualify as an intermediary service in terms of the definition of 'intermediary' in the IGST Act and the clarification provided in the Service Tax Education Guide¹, and their applicability on the facts of the Applicant is summarized in the table below:

From the Definition in IGST Act	From the Service Tax Education Guide	Facts of the Applicant's case
There is required to be an arrangement or facilitation of the supply of goods, services or securities	To qualify as an intermediary, there should be two supplies at any one time: i) the supply between the principal and the third party; and ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.	In Applicant's case: • Applicant supplies MCS to the foreign ship owner which includes consultancy service and suggesting of suitable charterers. • Subsequently, the foreign ship owner (upon independent negotiation) enters into an agreement for supply of service of transportation of goods by sea with the charterer. • Then the Applicant resumes its service to support the foreign ship owner in ensuring successful execution of voyage. Therefore, one supply of service precedes the other and at no occasion two services are supplied at one time.
The facilitation of supply should be between two or more persons	An intermediary cannot on his own account alter the nature or value of the supply which he facilitates on behalf of his principal, although the intermediary may be authorized to negotiate a different price	The nature and value of supply is independently negotiated between the foreign ship owners and the charterer. The Applicant is not equipped/ empowered by the foreign ship owner to negotiate the terms of contract between the foreign ship owner and the charterer. Therefore, the supply is not to facilitate but to supply and service its customers i.e. foreign ship owners.
The supply of goods or services or both or securities should not be on own account	The value of an intermediary's service should be identifiable and distinguishable from the main supply that he is arranging, but can be based on an agreed percentage of the sale or purchase price. The service provided by the intermediary on behalf of the principal should be clearly identifiable	The Applicant is directly providing its support service to the foreign ship owner and has no privity of contract between with the charterer. The service is provided on own account and its service is the key service or main service. The fee of Applicants' service is based on an agreed percentage of the supply of service between the foreign ship owner and the charterer however, this cannot be the sole reason to characterize an Applicant's service as an intermediary service. True nature of an agreement is to be determined, to understand the underlying transaction <i>Hindustan Shipyard Ltd vs. State of Andhra Pradesh [2000] 119 STC 533</i> .

24. The support service provided by the Applicant does not meet the criterion discussed above. These criteria must be satisfied to classify a service as an intermediary service, in absence of which the support service provided by the Applicant to the foreign ship owner will not qualify as an intermediary service. By reference to the scheme of the GST law, the supply of



service by the Applicant would be MCS constituted of consultancy service and support service (and not intermediary service), whereby consultancy service is the principal supply. In absence of consultancy service, the foreign ship owners do not engage with the Applicant for provision of support service to the ship owners even though it may be opted as separate service offering by the Applicant.

25. It needs to be appreciated that prior to insertion of the concept of intermediary, the Applicant was treating the MCS as BAS and this position was adopted by the Applicant even after introduction of the concept of intermediary was introduced in the Statute Book in July, 2012. This position adopted by the Applicant before and after the introduction of the concept of intermediary was accepted by the service tax department given that the Applicant has recurrently disclosed this position in its self-assessment in the service tax returns filed by the Applicant from time to time.
26. Previously, in terms of Section 80-O of the Income Tax Act, 1961 ('IT Act'), where technical and professional services were rendered from India for which payment was received in convertible foreign exchange a stipulated deduction from the income of an Indian resident by way of commission, fees, or any other similar payment was permissible. Similar service providers were eligible for and have claimed deduction in respect of MCS provided to foreign enterprises in terms of Section 80-O of the IT Act which was duly allowed by the income tax department. On this basis, it is submitted that MCS service provided by the Applicant was duly recognized as technical and professional service provided to its overseas clients.

Position under the erstwhile law

27. **Up to 30th June, 2012 (pre-negative list regime)**, provision of MCS by the Applicant was classified as BAS in terms of Section 65(19) of the Act which means any service in relation to:
 - i. "Promotion or marketing or sale of goods produced or provided by or belonging to the client; or
 - ii. promotion or marketing of service provided by the client; or
 - iii. any customer care service provided on behalf of the client; or
 - iv. procurement of goods or services, which are inputs for the client; or
 - v. production or processing of goods for, or on behalf of, the client; or
 - vi. provision of service on behalf of the client; or
 - vii. a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management.
28. MCS provided by the Applicant to the foreign ship owner was treated as export of service in terms of Rule 3(iii) of the Export of Service Rules, 2005 ("Export Rules") subject to the following requirements:
MCS is provided in relation to business or commerce, such taxable service shall be treated as export of service if the following conditions are satisfied:
 - (i) Provision of such service must be to a **recipient located outside India**; and
 - (ii) **Payment** for such service is received by the service provider **inconvertible foreign exchange**If the recipient of taxable service has any commercial establishment or any office relating thereto in India, the taxable service shall be treated as export of services only if the order for provision of such service is made by the recipient of such service from any of his commercial establishment or office located outside India.
29. The Applicant was providing MCS to a foreign ship owner located outside India and the payment for provision of service was received by the Applicant in convertible foreign exchange. **Therefore, MCS provided by the Applicant to foreign ship owner qualified as export of service in terms of the Export Rules and no service tax was applicable on this transaction between the Applicant and the foreign ship owner.** Where MCS was provided by the Applicant to the Indian ship owner, the Applicant collected service tax on the transaction and deposited it in the Government treasury.
30. **From 01st July 2012 up to 30th June, 2017 (negative list regime)**, with the introduction of negative list the services were no longer classified. MCS service of Applicant (which includes consultancy service and support service) was characterized as BAS. Given the nature of MCS provided by the Applicant which comprised of consultancy service and consequentially support service, the service was construed as naturally bundled service with consultancy service being the service which gave essential characteristics to the bundle of service in terms of Section 66F of the Act.
31. MCS provided by the Applicant did not qualify under specific rules in terms of the PPSR. Accordingly, the place of provision of Applicant's service was determined in terms of Rule 3 of the PPSR (default rule) as per which the place of provision of service is the 'place of the service recipient'.
32. Applying the above provisions, **MCS when provided by the Applicant to service recipient (i.e. foreign ship owners), the place of provision of service was outside India at the location of overseas service recipient. Consequently, no service tax was payable on this transaction.** MCS provided by the Applicant to overseas ship owner was treated as export of service in terms of Rule 6A of the Service Tax Rules, 1994 ("ST Rules") extracted below:

"6A. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when:

 - a) the provider of service is located in the taxable territory,
 - b) the recipient of service is located outside India,
 - c) the service is not a service specified in section 66D of the Act,
 - d) the place of provision of the service is outside India,
 - e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
 - f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 92b Explanation 3 of clause (44) of section 65B of the Act."
33. Therefore, the position adopted by the Applicant in terms of the extant GST law is in line with the position of the Applicant under the erstwhile law. This has been disclosed by the Applicant and accepted by the tax authorities in the service tax returns filed by the Applicant up to June 30, 2017.

II. Separate invoicing for consultancy service and support service

34. Assuming that support service provided by the Applicant is construed as supply of intermediary service, supply of entire MCS by the Applicant should not be treated as intermediary service.
35. MCS provided by the Applicant comprises of consultancy service and support service and the Applicant is able to separately allocate value for each service supplied under MCS, raise separate invoice and account for each service separately. If support service provided by the Applicant is construed as intermediary service, the entire revenue from MCS should not be offered to GST as intermediary service. If consultancy service is provided separately by the Applicant to foreign ship owner and a separate invoice is raised for this supply of service (split billing), we assume that the Applicant will be allowed to independently determine the GST incidence on consultancy service provided to foreign ship owner. Place of supply of consultancy service provided by the Applicant to foreign ship owner will be determined in terms of Section 13(2) of the GST Act, which provides place of supply as 'the place of recipient'. As recipient of service in this case is the foreign ship



owner located outside India, the supply of consultancy service will not be exigible to GST and subject to the conditions prescribed in Section 2(6) of the IGST Act, the supply will qualify as export of service.

36. It is implicit that only the value attributed by the Applicant to support service (which if construed as intermediary service) will be exigible to GST in terms of the scheme of GST law. Therefore, the Applicant will rightfully split the bill and allocate appropriate values to consultancy service and support service supplied by the Applicant.

Conclusions

37. On the basis of the extant law as discussed here and as also applicable to the factual matrix described, it is the Applicant's understanding and view that the supply of MCS (which is comprised of consultancy service and support service) is a supply which in terms of Section 7(1)(a) of the CGST Act read with Section 2(30) of the CGST Act is to be regarded and classified as 'composite supply' of service, the principal supply of which is consultancy service.
38. As a result of these being the positions, when the service is provided by the Applicant to a foreign ship owner, the transaction will not be liable to GST, as the place of supply of service (location of service recipient) is outside India in terms of Section 13(2)(a) of the IGST Act.
39. Alternatively, where supply is distinctively provided (i.e. as consultancy service and support service for two fee terms associated with each) and support service by the Applicant is construed as intermediary service, the Applicant should offer (only) the revenue from the support services to GST since the place of supply of intermediary service is the location of supplier of service in terms of Rule 13(8)(b) of the IGST Act, whereas consultancy service will continue to be outside the ambit of GST, in view of the applicable place of supply rule i.e. Section 13(2)(a) of the IGST Act, which is outside India.

Prayer

40. In view of the factual matrix in the Applicant's case and the extant legal provisions, the Applicant seeks an Advance Ruling from this Hon'ble Authority in respect of the composite supplies of MCS by the Applicant to foreign ship owners."

Submission dt.02.04.2018

The Applicant makes the following submissions, which are being made without prejudice to, and is to be read along with the submissions made in the ARA, and at with submissions made during the hearings.

FACTS AND BACKGROUND

1. The Applicant is engaged in the supply of comprehensive Marine Consultancy Service ("MCS") consisting of two elements i.e., Consultancy Service and Support Service. This AAR concerns only supplies made to overseas clients and is accordingly Limited and worded. MCS service of the Applicant is provided to the Foreign Ship Owners ("FSO") who wish to have and therefore seek out potential employment (charterers) for their vessels. Entire engagement between the Applicant and FSO is on principal to principal ("P2P") basis and has the essential nature of consultancy or market intelligence/ information. Reference in this regard may be made to a sample Consultancy Agreement dated 01 March, 2017 entered between the Applicant and foreign ship owner Singapore Shipping international Pte. Ltd. ("the Agreement") is attached as Enclosure 1 to Annexure I of the ARA.
2. For the provision of MCS (which is always comprehensively rendered), FSS has employed resources which *inter alia* include management professionals, master mariners and chartered accountants. These professionals analyze market data available to them through the internet and other reliable trade sources or by projections. Such data is then converted into meaningful reports which help Foreign Ship Owner ("FSO") employment of its vessels.
3. Nature of MCS provided by FSS to FSO
- 3.1. **MCS consists of consultancy services and support services (may include services for or completing employment) which are inherently tied up (bundled) and integrally enjoined, filed along with ARA as a commercial offering.**
Consultancy service rendered by FSS to FSO consists of the following services:
 - i. As Specialists in Freight market movement, the consultant will analysis commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to the company.
 - ii. Track, collate, analyse and monitor port development and logistics data originating from reliable source and update future trends
 - iii. Monitor world-wide economic development, bulk commodity trade pattern development
 - iv. Identify and provide information on port costs, bunker (fuel), trend, cost estimation and analysis
 - v. Preliminary evolution of cargo volume trade patterns, trend in commodity movement, port congestion, global and regional economic development and analysis
 - vi. Techno commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict, any other causes which have prospects to impact tradeThe foregoing services are provided as a single offering of Consultancy service, failing which the provision of service will not be meaningful. Consultancy service helps the client (i.e. FSO) with market intelligence and trade analysis, etc. which helps them in finding potential charterers. Thus, the Consultancy service provided by FSO in tune helps the FSO to augment its business and expand its client base and all these services are provided as one service.
- 3.2. **Support services** provided by FSS to FSO (client) is usually at the end of the employment of vessel and involves FSS monitoring voyage execution, examining the lay time calculations and arranging for reconciliation of accounts to crystalize receivables of FSO. Occasionally, support may involve postal or ministerial acts of transmitting messages between FSO and charterer.
- 3.3. Both Consultancy service and Support service are together provided, and Applicant does not offer these independently or separately and so has a comprehensive agreement and fee.
4. Manner of supply of MCS
- 4.1. While supplying the abovementioned services, Applicant and FSO converse, appreciate data, evolve best consumer strategy for employment of vessel. Typically, the Applicant is continuously studying/ analyzing the freight market and trade development across the world. On the basis of this analysis, the Applicant reaches out to FSO who have idle vessels and are looking out for charterers to provide such FSO with information which helps FSO to position their vessel and acquire charterers seeking to transport goods- The Applicant is only disseminating information which is useful for FSO to find potential charterers and this is the end of Consultancy service. FSS is not acting for or representing or an agent for or employed by or assists or advises the charterer in any form or manner.
- 4.2. MCS is required by FSO and under contractual terms provided by Applicant to FSO in the following manner:
 - i. FSO establishes contact with the potential charterers, communicates with and concludes the contract with the charterer with best mutual requirements. In limited manner FSS may act as a postman between the parties (FSS has no rights or obligations whatsoever to negotiate or enter into contract and the total time devoted by FSS in this process is lesser



- than 20% or less). Reference in this regard may be made to paragraph 1(b) of the sample Agreement which provides that the service of Applicant does not require him to be an advocate for the FSO or its products in any forum, public or private.
- ii. Therefore, FSO provides service to charterer as per the terms and conditions agreed between them and freight charges is earned, and GST on freight/charter hire is also paid by charterer if applicable, into government treasury.
- 4.3. Agreements between Applicant and FSO are identical and are standard form of agreement which are entered with each FSO to whom services are provided by the Applicant. Reference in this regard may be made to the sample Agreement as all agreements concluded by the Applicant are in similar fashion.
- 4.4. Service of Applicant to FSO is value based and market driven 2 and requires devoting time and attentions wherein FSS is not acting as an advocate to the FSO 4. Applicant has a fiduciary relationship with the FSO and Applicant carries risks under the Agreement, which may be that - inputs of Applicant may not be proper or meet the requirements of FSO or the market conditions may deteriorate, in which case no fees is payable to Applicant, since no engagement is crystallized by FSO.
5. Timing of payment
- 5.1. Fees for provision of MCS becomes payable to Applicant upon conclusion of contract between the FSO and successful employment with the potential charterers identified by Applicant or otherwise, and completion of support activities. Only then has all contractual obligations of Applicant been completed. 6As per the ever evolving and highly competitive industry, fees are payable upon conclusion of the contract i.e., it is paid upon the agreed additional support services, lay time calculations, etc. being provided to FSO by FSS. As an industry and market practice, fees is a percentage of revenue, which has been contractually agreed between the FSO and the Charterer. This arrangement is premised on concept of value added service i. E. 'no contract' will result in 'no fee'. From another perspective, contingent fee is evolving globally as a payment structure/ terms like for consultancy and cost reduction assignments and factors in risk for Applicant (Service Provider). Such payment timing, i.e. upon full completion of agreed activities is the basic law of commission.

ISSUES TO BE CONTEMPLATED UNDER ADVANCE RULING APPLICATION

7. Given the above background and in context of question posed, the following notable features of the contractual arrangement of the Applicant with the FSO are:
- The MCS supplied by FSS is a "composite supply" (similar to bundled service in the erstwhile regime) with consultancy service as the principal supply [Section 2(30) of the Central Goods and Services Act, 2017 ("CGST Act")] and not a "mixed supply"?
 - MCS deserves to be classified as per SAC 9967 i.e. 'support services in transportation, other than GTA' and not as (SAC 9983) other professional, technical and business services (excluding advertisement service), which is a residuary head, in terms of the following entry of Notification No. 11/ 2017 – IGST (Rate), even while GST rate notified is 18% for both.
 - The MCS qualifies as an export of service under Section 2(6) of the IGST Act and so is not liable to tax, which particularly involves the place of supply determined as per Section 13(2)(a) of the IGST Act in terms of which the place of supply of service will be the 'location of the recipient of service' and to be determined as per Section 13(3)(a) of the IGST Act in terms of which the place of supply of service will be 'where the service is performed'?

OUR SUBMISSIONS

1. **MCS supplied by Applicant to FSO is a composite service of Consultancy service and Support service**
8. From 01st July, 2017 (GST regime), all forms of supply of service made for a consideration by a person in the course of furtherance of business qualifies as supply which is liable to GST in terms of Section 7(1)(a) of the CGST Act unless exported or exempted. Where two or more services are provided by a supplier in conjunction, GST law has continued the concept of composite supply and mixed supply as was given in Service tax law. A composite supply means a supply of two or more services which are 'naturally bundled' and supplied in conjunction with each other in the ordinary course of business, one of which is the 'principal supply'. A mixed supply is the supply of two or more services made in conjunction with each other by a taxable person for single price where such supply does not constitute a composite supply.
9. A composite supply is defined in Section 2(30) of the CGST Act. as below:
"Section 2(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"
10. The concept of composite supply is similar to the concept of 'naturally bundled service' under the erstwhile negative list regime. Applicant is supplying various services to the FSO (refer paragraph 3 above). These services consisting of Consultancy service and Support service is provided is provided together to the FSO in conjunction as one bundle of service. Conjunction means "condition of being joined". MCS supplied by the Applicant is joined together where Consultancy service is provided at the time of initiation of service by the Applicant to the FSO and Support service is provided at the end of supply at the time of completion of employment of the FSO by the charterer. No FSO separately seeks provision of Support service, MCS has evolved over a period of time and Support service is typically provided as value addition to the FSO. Consultancy service in the ordinary course of business is provided in combination with Support service, this is indicated by the industry practice.
11. One of the service provided by the Applicant amidst the gamut of service is the principal supply or the main/ primary supply. In case of the Applicant, the principal or the primary supply by the Applicant is the Consultancy service which helps the FSO to initiate business by finding business and the Support service is ancillary service which is provided at the time of closure of service when the Applicant is called upon to calculate lay time, etc. and help FSO to close its service provided to the charterer. Both Consultancy service and Support service is provided to and for FSO on P2P basis and the Applicant has no wherewithal with the Charterer or paid by the Charterer-
12. Supply of MCS by the applicant consisting of consultancy service and support service will be construed as a supply of composite service made by the applicant as these services (i.e. consultancy service and support service) are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which (i.e. consultancy service) is the principal supply.
13. The term 'naturally bundled and supplied in conjunction with each other in the ordinary course of business' is not defined in CGST Act or IGST Act. However, this provision has been carried forward from the Service tax law and therefore, reference may be made to taxation of Services: An Education Guide (June 20, 2012), which provides that to demonstrate that a



service is supplied in conjunction with each other in the ordinary course of business, the supply of service should meet some of the following criterion:

- **The perception of the recipient of service** i.e., a large number of service receivers expect these services to be provided as a package. Applicant is providing the service as a package as the FSO prefers to engage with one service provider to receive gamut of services which augments their business and it is convenient to pay singular consideration which is a percentage of the value of freight received by the FSO.
 - **Majority of similar service provider in the industry provide similar bundle of service.** Service provided by Applicant to FSO has an evolving nature. Previously, depending upon the market scenario the requirement was to find charterers, however, post global financial crisis about a decade ago, there is an increase in competition and service expectation by the FSO thus, Consultancy service is being provided with other value- added services. The FSO engages Applicant for Consultancy services and subsequent Support service usually provided in tandem. FSS is engaged in cross border supply of service using latest technology and methods. More than domestic industry, Applicant has to compete on global platform to international standards to meet FSO requirements.
 - **One service is the main service** and other services provided in the bundle are incidental or ancillary to the main service. As discussed above, Consultancy service provided by Applicant to FSO expands its business viability and profitability. FSS's advice on vessel positioning, bunker trends, commodity market, etc. helps FSO to reach out to potential charterers which is the main objective of FSO's business. Once FSO enters into a contract with the charterers, FSS is called upon to provide Support service in relation to the voyage. Therefore, without Consultancy service FSO will not be able to efficiently contract with potential charterers and provide services and Applicant may not be called upon to provide Support service.
 - **The service recipient pay single price** regardless under of the services within the package, Applicant is obliged to provide all services under the Agreement including the Consultancy service and Support service. These services are provided by Applicant to and for paid FSO on need basis. MCS is never provided to or for Charterer and fee for MCS is only paid by the FSO. This is another important indicator of the perception in Service recipient's minds that fee is payable for a consolidated offering.
 - Elements are normally **advertised as a package.** Applicant in all cases enters into an agreement with FSO to provide MCS consisting of Consultancy service and Support service. Applicant is not a conduit between the FSO and the Charterer. Generally, as discussed above, change in industry dynamics post globalization and increased competition both domestic and overseas, has made it necessary for FSS to provide the entire gamut of service as a package.
 - **Different elements not available separately.** Neither FSO approach applicant to provide only consultancy service or only Support service, nor is the Applicant able to or actually engaged to provide each of the elements of service separately. In fact, the Applicant has in the past not provided these two services separately and always provided these conjointly. The FSOs (industry) require generally the provision of services (MCS) as a bundle of service and owing to this expect Consultancy service and Support service together and as a result it is commercially inexpedient for Applicant to so offer it.
 - Different elements are integral to one overall supply. Service recipient's end objective is employment of vessel. FSS provides Consultancy service to FCO. The information disseminated by FSS under Consultancy service is used by FSO for employment of vessels. Once FSO itself fixes the charterer, Applicant is required to provide Support to FSO by enabling conclusion of the transaction inasmuch as reconciliation and calculation of lay time to receive charter hire earnings for the employed vessel. Thus, the supply is intrinsically linked and are integral to one another and so clearly in conjunction.
14. The Applicant carries the risk as the Service provider providing MCS. The Applicant is providing MCS to the FSO pursuant to which FSO generates employment for its vessels. Applicant's consideration for MCS is paid by the FSO only when the advice of Applicant helps the FSO to find a Charterer and independently conclude contract with such Charterer. Applicant and the FSO are in a fiduciary relationship in terms of which the Applicant is obligated to act for the benefit and interest of FSO.
 15. In view of the aforesaid facts, MCS service provided by FSS to FSO consisting of consultancy service and Support service for which a unified consideration is charged, qualifies as naturally bundled service supplied in conjunction with each other, one of which (i.e. Consultancy service) is the principal supply. Thus, MCS supplied by FSS to FCO would qualify as composite service.
 16. The Applicant in this regard would like to bring to your attention the submission made by State Tax officer ('the officer') before the Hon'ble Authority on March 13, 2018 ('Revenue Submission'). In this Revenue Submission, the Officer has submitted that MCS is a composite supply of service in terms of Section 2(30) of the CGST Act.
 17. Contrary to the above contentions, a "mixed supply" is the supply of two or more services made in conjunction with each other by a taxable person for single price where such supply does not constitute a composite supply in terms of Section 2(30) of the CGST Act. As MCS provided by FSS qualifies as composite supply given the discussion and analysis above, this service would not qualify as "mixed supply" in terms of Section 2(74) of the CGST Act.
- II. MCS provided to FSO will qualify as an export of service in terms of Section 2(6) of the IGST Act**
18. Export of service is defined under Section 2(6) of the IGST Act as following:

"2(6)'export of services means the supply of any service when, ---

 - i. *the supplier of service is located in India;*
 - ii. *the recipient of service is located outside India;*
 - iii. *the place of supply of service is outside India;*
 - iv. *the payment for such service has been received by the supplier of service in convertible foreign exchange;*
 - and*
 - v. *the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8"*
 19. Applicant providing MCS to the FSO qualifies the conditions (i), (ii), (iv) and (v) prescribed above as the supplier of service i.e. the Applicant is located in India, the recipient of service i.e. the FSO is located outside India, payment for supply of MCS service is received from outside India in convertible foreign exchange and supplier of service and recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8 of the IGST Act.



20. Applicant also satisfies condition (iii) above as the place of supply of MCS is outside India in terms of the discussion below:
- 20.1. MCS will qualify under Section 13(2)(a) of the IGST Act
- The place of supply of MCS (with consultancy service as the principal supply) when provided to FSO shall be the 'location of the recipient of service, in terms of Section 13(2)(a) of the IGST Act (i.e. the default rule), as supply of MCS does not qualify in the specific place of supply rules prescribed under Section 13 of the IGST Act. Therefore, when MCS as composite supply (consisting of consultancy service and support service) is supplied by the Applicant from India to FSO located outside India, the place of supply of service will be the location of the FSO located outside India.
- 20.2. MCS does not qualify under Section 13(3)(a) of the IGST Act
- Section 13(3)(a) of the IGST Act provides that where services are supplied in respect of goods which are to be required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service, the place of supply of service in such case shall be the location where the services are actually performed. Section 13(3) (a) In such of IGST Act shall is extracted below:
 "13(3) The place of supply of the following services shall be the location where the services are actually performed, namely:-
 (a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to Provide the services"
 - MCS is provided to FSS is in-turn utilized by the FSO to find a charterer looking for transportation of Goods and this also involves lay time calculation, arranging reconciliation of account and voyage monitoring. Both Consultancy service and Support service are intellectual services provided by Applicant from its office with its own resources thereat, who never have to or have in the past to deal with vessel of FSO or cargo of Charterer. In no case, the vessel or the cargo transported by the FSO is physically made available by the recipient of service (i.e. FSO) to the provider of service (i.e. FSS), therefore, Section 13(3)(a) of IGST Act would not at all apply to MCS.
 - Since there is no definitive guidance, reference in this regard may be made to Taxation of Services: An Education Guide (June 20, 2012) which is the predecessor rule in Service tax (negative list), the relevant paragraph of which is extracted below:
 "The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. Of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys."
 - It is reiterated that in order to qualify under this rule, the goods temporarily come in the physical possession or control of the service provider, which is not the case of Applicant. Neither the vessel or the cargo is ever transferred to Applicant for provision of its service to FSO. The activity performed under MCS by the Applicant is not in the nature of stevedore who is a handler of goods on the maritime movement of commodities and helps in loading and unloading of vessels. Unlike stevedore, the Applicant is providing abstract MCS which does not involve the Applicant to touch the cargo of charterer or vessel of the FSO. The example above covers Consultancy service which is delivered to the customer on pen drive to the customer. In such case, the rule on performance-based service will not apply has been specifically classified. Similarly, FSS provides MCS service which is delivered to FSO via email and performance-based rule i.e. Section 13(3)(a) of the IGST Act would not apply on this transaction. Therefore, literally as also by Education Guide reference, Section 13(3) of the IGST Act cannot be applied.
- 20.3. MCS does not qualify under Section 13(8) (b) of the IGST Act
- Section 13(8) (b) of the IGST Act would apply on supply of service which qualifies as 'intermediary service'. an intermediary service in terms of Section 2(13) of the IGST Act, extracted below:
 "Section 2(13) - "intermediary" means a broker, on agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."
 - When the Applicant is providing MCS, it is a composite supply of service wherein Consultancy service is the principal supply. MCS is supplied on P2P basis to and for the FSO and would not qualify as 'intermediary service' in terms of Section 2(13) of the IGST Act. Given this, place of supply of MCS will not be determined in terms of Section 13(8) (b) of the IGST Act which provides the 'location of supplier of service' as the place of supply. Resultantly, the place of supply of MCS (comprising of support service and intermediary service) will not be the location of the Applicant in India.
 - In arguendo, if the Applicant is characterized as a supplier of intermediary service, it must not be lost sight of that the service provided by FSS in this case would be in relation to a employment of a vessel (i.e. service provided) by the FSO located outside India - so the destination of Applicant's service is outside India, to the Charterer located outside India, and contract for plying of vessel between FSO and the Charterer is signed outside India and executed outside India. Therefore, as the service of Applicant is provided in relation to a services which is an intangible in nature and is initiated, executed and concluded outside India, between parties located outside India and the service of Applicant is used / consumed outside India, the transaction be regarded as being outside the territorial jurisdiction of GST law, which extends up to 200 nautical miles from baseline inside sea in India. In other words, it will be incongruous to levy GST on a transaction which is outside the geographical jurisdiction of the law.
21. In any case it be noted that the Officer in the Revenue Submission has submitted that the place of supply of service of MCS should be determined in terms of Section 13(2) of the IGST Act and the place of supply of service should be the place of the recipient of service.
22. In view of the foregoing discussion pertaining to facts of the Applicant's case, supply of MCS would qualify all the conditions under Section 2(6) of the IGST Act and would qualify as export of service which is zero rated.
- III. **MCS service provided by Applicant to FSO qualifies as Support service in relation to transport, other than Goods Transport Agency ('GTA')**



23. Notification No. 11/2017 - Central Tax (Rate) dated June 28, 2017 ('the Notification') provides for the GST rate for service based on the classification of services read with Annexure to the Notification. Heading 9967 at Serial No. 11(ii) of this Notification deals with "support services in transport, other than GTA". Given that MCS service provided by Applicant to FSO is in relation to transportation of goods by vessel only, in our submission, Heading 9967 under which SAC 996759 at Serial No. 148 of the Annexure to the Notification ("other supporting services for water transport nowhere else classified") is the specific entry which provides the appropriate description of activities provided by Applicant and therefore, MCS will be classified therein and leviable to GST at the rate of 18%.

General Agreement on Trade in Services

24. To substantiate the submission, reference is made to classification as per Service sectoral classification list of World Trade Organization ('WTO') which classifies MCS service provided by FSS as 'supporting services for maritime transport' (entry 745). Furthermore, the Schedule prescribed under the Served for India Scheme ('SFIS') of Foreign Trade Policy has embraced the classification by the WTO. This Schedule of SEIS scheme also classifies MCS under the category of Maritime Transport Services [supporting services for maritime transport (745)]. Thus, it can be safely concluded that MCS provided by Applicant to FSO would be classified as support services in transport, other than GTA.
25. In the invoice raised by Applicant on FSO which categorizes the supply of service by FSS to FSO as MCS, a copy of which invoice is enclosed as Annexure 1 supports the commercial understanding. Consequently, in the financials of FSS for the year 2017-18 in the Profit and Loss accounts income from MCS has been reflected as revenue.
26. MCS will not be classified under Heading 9983(ii) at Serial No. 21 as "other professional, technical and business services other than (i) above". Relevant entry under Heading 9983 is SAC 998399 at Serial No. 364 of the Annexure (i.e. "other professional, technical and business services nowhere else classified"). Services classified under this head are leviable to GST at the same rate of 18%. It is evident that this is the residuary entry which is generic in nature. Reference in this regard may be made to the basic principal of classification in terms of which a specific entry will prevail over a generic entry. As this is a generic entry, the specific entry of SAC 995759 would prevail.

CONCLUSION

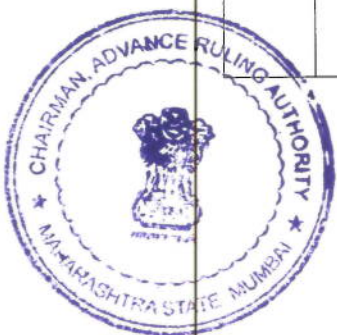
27. In light of the above and the ARA filed by the Applicant on January 19, 2018, the Applicant prays that the questions referred to this Hon'ble Authority be decided by holding the following:
- The MCS consists of Consultancy service along with subsequent Support service which constitutes naturally bundled offerings in conjunction with each other, where consultancy service is the principal supply in supply. The MCS is thus a Composite service for GST law.
 - The Applicant qualifies all the conditions prescribed for supply of MCS to FSO to qualify as export under Section 2(6) of the IGST Act including the condition that place of supply of service by Applicant to overseas FSO should be outside India. MCS provided by FSS do not qualify in the specific place of supply rules prescribed under Section 13 of the IGST Act, resultantly, place of supply of MCS would be determined in terms of Section 13(2) of the IGST Act, which is the default rule and provides that the place of supply be the place of the recipient of service, which in the facts in hand is the place of the FSO which is located outside India.
 - MCS would be classified under SAC 996759 at Serial No. 148 of the Annexure to the Notification (i.e. "other supporting services for water transport nowhere else classified") as this is the specific entry which provides the appropriate description of activities provided by Applicant and therefore, MCS will be classified therein."

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

"Submission of NIL date

Qs.No	Questions raised by the applicant	Submission as per ACT & RULE
A.1	Whether Marine Consultancy Service (MCS) provided to foreign ship owners constitutes "Composite supply" with the principal supply of consultancy services?	The definition of Composite supply uses the words naturally bundled. This is not defined in GST ACT but was used in Finance Act, 1994 (relating to service tax). Hence, clarifications given under those provisions are relevant. Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators few of which are listed below:- - The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business. - 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 combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. - 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



		b. The elements are normally advertised as a package. c. The different elements are not available separately d. The different elements are integral to one overall supply – if one or more is removed, the nature of supply would be affected.
A.2	Whether the place of supply of MCS (as a composite supply) will be determined in terms of Section 13(2) (a) of the Integrated Goods and Services Tax, 2017 (“IGST Act”) , i.e. the ‘ location of recipient of services’?	Section 13 of the IGST Act has been reproduced.
B.1	In the alternate, where services are provided to foreign ship owners distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:	
(a)	Whether consultancy service will qualify as business consultancy service in terms of the scheme of classification of services (Annexure to Notification 11/2017- Central Tax (Rate), dated 28 th June, 2017?	Heading 9983 – residual entry (ii)
(b)	Whether the place of supply of such consultancy service will be the ‘location of recipient of service’ in terms of section 13(2) (a) of the IGST Act?	Section 13(2) of the IGST Act which is the default rule for determining the place of supply of services where the location of supplier or location of recipient is outside India, “the place of supply of services except the services specified in sub-section (3) to (13) shall be the location of the recipient of services.
(c)	Whether support service qualifies as “Intermediary Service” in terms of Section 2(13) of the IGST Act? And, if ruled that the support service qualifies as an intermediary service, the place of supply of support service as intermediary service will be the ‘location of supplier of service’ in terms of Section 13(8)(b) of the IGST Act ?	Section 2(13) of IGST Act “intermediary” means a broker, an agent or any other person, by whatever name called, who arrange or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

04. HEARING

The case was taken up for preliminary hearing on dt.14.02.2018. Sh. Ranjeet Mahtani and Sh. Abhinay Kapoor, both Advocates, duly authorised, alongwith Sh. Jatin Mehta, Accountant appeared and reiterated the contention as made in the written submission.

Sh. Ranjeet Mahtani, Advocate orally agreed and requested that his queries with respect to place of supply may not be considered for decision by the Authority.

The final hearing was held on dt.13.03.2018. Sh. Ranjeet Mahtani and Sh. Abhinay Kapoor, both Advocates, appeared and made oral and written contentions as per detailed submission made in their application and documents submitted at the time of hearings.

Ms. R. S. Iyer, jurisdictional State Tax Officer appeared on both the hearings and has made a written submission.

05. OBSERVATIONS

We have gone through the facts of the case. Sub-section (2) of section 97 of the GST Act says that the question on which the advance ruling can be sought shall be in respect of,--

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;



- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

There being no specific question in respect of place of supply covered under Section 97 of the GST Act, the applicant conceded that his queries with respect to place of supply may not be considered for decision by the Advance Ruling Authority. The questions for decision, therefore, are thus -

- Q.1** Whether Marine Consultancy Service ("MCS") provided to foreign ship owners constitutes "composite supply" with the principal supply of consultancy service?
- Q.2** In the alternate, where services are provided to foreign ship owners distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:
- Whether consultancy service will qualify as business consultancy service in terms of the scheme of classification of services [Annexure to Notification 11/ 2017 – Central Tax (Rate), dated 28th June, 2017]?
 - Whether support service qualifies as "intermediary service" in terms of Section 2(13) of the IGST Act?

We shall now discuss each of the questions.

Question 1

Whether Marine Consultancy Service ("MCS") provided to foreign ship owners constitutes "composite supply" with the principal supply of consultancy service?

The applicant has tendered a sample Consultancy Agreement dated 01 March, 2017 entered between the applicant ('The Consultant') and foreign ship owner Singapore Shipping International Pte. Ltd. ('The Company') pursuant to the MV AM OCEAN PRIDE/ MARUBENI CEMENT CHARTER PARTY CONTRACT DATED 3RD MARCH 2017.

The important clauses from this Agreement dt.01.03.2017 could be seen to have an understanding of the issue :

WHEREAS 'The Company' desires that the Consultant provide advice and assistance to 'The Company' in their area of expertise; and WHEREAS, the Consultant desires to provide such advice and assistance to 'The Company' under the terms and conditions of this Agreement;

1. Consulting Services

(a) 'The Company' hereby appoints Consultant as a consultant and technical advisor to perform the consulting services specifically set out in Exhibit A attached to this Agreement and made a part hereof (hereafter referred to as the "Services"), as said Exhibit may be amended in writing from time to time, and Consultant agrees, subject to the terms and conditions of this Agreement, render such Services during the term of this Agreement. Such services shall be limited to the area of expertise described in Exhibit A, as amended in writing from time to time. Consultant shall render services hereunder at such times and places as shall be mutually agreed by 'The Company' and Consultant.

(b) It is understood that the purpose of the Consulting is to provide periodic review and advice relevant to Shipping and Maritime matters related to the MV AM OCEAN PRIDE/MARUBENI CEMENT CHARTER PARTY CONTRACT DATED 3RD MARCH, 2017. To that end, 'The Company' shall provide Consultant, in advance of meetings, with accurate, unbiased and sufficient information for him to review the subject matter thereof, and shall promptly provide further information that Consultant reasonably deems relevant to forming any pertinent conclusions relevant to the matter for discussion.

It is expressly understood that Consultant has fiduciary obligation to 'The Company' based on contractual terms of this Agreement; that Consultant's role is to provide independent advice uninfluenced by commercial concerns; and that service as a Consultant does not require him to be an advocate for 'The Company' or its products in any forum, public or private. The Consultant expressly agrees that under no circumstances will this role be compromised or inaccurately represented. The implementation of such value-based and market-driven advisory service is expected lead to increased cargo volumes, and the support from The Consultants will provide 'The Company' with long-term sustainable revenue.

2. Qualification

Consultant for a wide range of professional, engineering and other technical services in support of the Company's activity. The Consultant will be used to augment 'The Company' resources, and will provide qualified technical and professional personnel to perform the duties and responsibilities assigned under this agreement. The Consultant is obliged to provide technically &



professionally qualified staff in every way proficient, individually or collectively as a team to render to 'The Company' the required standard of Advisory Service.

The Consultant shall ensure that competent technical & professionally qualified team of Chartered Accountants, Master Marine and/or Professional Marine Engineer with support associates having at least qualified at Narotham Morarjee Institute of Shipping or equivalent overseas qualification shall attend to render advisory service.

3. Compensation and reimbursement

In consideration of the services to be provided by Consultant to 'The Company' hereunder, 'The Company' shall pay unless otherwise agreed in each particular charterparty contract to Consultant a Fee of 1.25% of Gross Revenue ("Gross Revenue" meaning the freight, dead freight and demurrage received under contracts fixed through the Consultant).

'The Company' shall not reimburse Consultant for any travel or other out of pocket expenses Consultant incurs in connection with performing the Services.

'The Company' shall endeavor to pay to Consultant invoiced amounts within thirty (30) days after the date of invoice or successful execution & completion of assigned contract whichever is later.

4. Duties of The Consultant

The Consultant shall, while this Agreement is in force or until the satisfactory completion of the Assignment, devote such of his time, attention and abilities to the Assignment as may be necessary for the satisfactory completion thereof as the same shall be determined by 'The Company'. The Consultant agrees to advise and assist 'The Company' as required in accordance with their Technical & Professional ability with respect to all aspects in the performance of such duties the Consultant shall comply with all reasonable requests and directions of 'The Company' or its customer or nominee including subsidiaries & affiliate entities. Complying with all local or internal policies and regulations operated by or affecting 'The Company' or its customer or nominee as the case may be provided the Consultant has been appraised of them.

5. Independent contractor status

'The Company' shall request Consultant services on an as-needed basis. There is no guarantee that any or all of the services described in this Agreement will be assigned during the term of this Agreement. Further, the Consultant will provide these services on a non-exclusive basis. 'The Company', at its option, may elect to have any of the services set forth herein performed by other consultants or 'The Company' staff. The parties agree that this Agreement creates an independent contractor relationship, not an employment relationship. The parties acknowledge that neither party has, or shall be deemed to have, the authority to bind the other party.

6. Indemnification

The Consultant shall attend to the affairs of 'The Company' in a prudent and business-like manner in good faith, with prior disclosure of any conflict of interest.

7. Intellectual Property

(a) Consultant will be providing timely access to proprietary and valuable information that 'The Company' might otherwise not receive within time. Timing being the essence of efficient professional service. In addition, those parties also understand that should Consultant, in the course of providing Services, invent or participate in inventing modifications or improvements to 'The Company' resources, 'The Company' reasonably seeks to secure such improvements for its own use and practice. At the same time, 'The Company' understands and acknowledges that Consultant has pre-existing and on-going obligations to independent research, collaborative agreements within the scope of certain policies. These obligations include a duty on the part of Consultant to disclose and assign to 'The Company' any proprietary rights arising during the course of such engagement and any overlapping consulting arrangements

(b) However, the parties agree that it is mutually beneficial that Consultant be able to participate fully in providing Services, as stated herein, without being obligated to constrain her or his comments or contributions based upon the complexities of applying these conflicting obligations to intellectual property ownership. The Agreement that result directly from Confidential Information provided by Consultant pursuant to this Agreement shall reside with 'The Company'.

8. Confidential Information

(a) The parties acknowledge that in connection with Consultant's Services, the Consultant may disclose to 'The Company' time sensitive confidential information and trade reports of the Consultant which the Consultant may within the scope and in the course of performing the Services

Such information may take the form of, for example: data concerning risk assessment, discoveries made by the Consultant; the Consultant's know-how; marketing strategies and processes.

(b) Consultant hereby agrees that during the term of this Agreement: (i) Consultant shall not publicly divulge, disseminate, publish or otherwise disclose any 'The Company' Confidential information without 'The Company's' prior written consent (ii) Consultant shall not use any such 'The Company' Confidential information for any purposes other than consultation with 'The Company'.

(c) Consultant agrees that their obligations under the Agreement are of a unique character that gives 'The Company' particular value, Consultant's breach of any of such obligations will result in professional misconduct towards 'The Company'.

9. Term

(a) This Agreement shall remain in effect for a term of 1 year commencing on the date first written above, unless sooner terminated as hereinafter provided, or unless extended by agreement of the parties.

(b) This Agreement may be terminated by either party, with or without cause, upon thirty (30) days prior written notice to the other; provided that the Consultant shall, in accordance with the terms and conditions hereof, nevertheless wind up in an orderly fashion assignments for 'The Company' which Consultant began prior to the date of notice of termination hereunder.

(c) Upon termination of this Agreement for any reason, Consultant shall be entitled to receive such compensation and reimbursement, if any, accrued under the terms of this Agreement, but unpaid, as of the date Consultant ceases work under this Agreement. In addition, Consultant shall be reimbursed for any non cancellable obligations, any cancellation penalties, and unless Consultant terminates the agreement without cause, any expenditures reasonably made in order to perform the Services that were to occur had cancellation not occurred.

(d) The Consultant shall not use any facilities, funds or equipment owned or administered by 'The Company' in the performance of the Services, except with the prior written consent of 'The Company' and in accordance with all applicable policies of 'The Company'.



(e) The parties hereby agree that this Agreement and the provisions hereof shall be construed in accordance with the laws of England. Arbitration in Singapore, as per English law, conducted in accordance with rules of 'London Court of Arbitration in Singapore, as per English Law, conducted in accordance with rules of 'London Court of International Arbitration' (LCIA'). Each party to appoint their own Arbitrator and in case of disagreement, the matter will be referred to Umpire whose decision will be final and binding.

(f) The parties acknowledge that the Services are Professional & Technical in nature, and that from Consultant's perspective the specific identity of 'The Company' including its leadership, corporate culture, staff and reputation, is material to Consultant's choice to enter into this Agreement. Therefore the parties expressly agree that no party may assign this Agreement without the written consent of the other.

(g) The Consultant shall conduct all activity in the sole best interest of 'The Company'.

Exhibit A - Description of Consulting Activities Nature of Services:

- 1) As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to 'The company'.
- 2) Track, collate, analyze and monitor Port Development & Logistics data originating from reliable source and update future trends
- 3) Monitor worldwide Economic Development, Bulk Commodity Trade pattern development
- 4) Identify and provide information on Port Costs, Bunker (fuel) trend, Cost Estimation & Analysis.
- 5) Monitor Voyage Execution for smooth and efficient operations,
- 6) so as to optimize performance for 'The company'.
- 7) Examine lay time calculations and arrange for accounts reconciliation for objectives of eventual settlement.
- 8) Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, Global as well as Regional economic development and analysis
- 9) Techno-Commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, Geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict or any other causes which have prospects to impact trade.
- 10) Consultancy Fee is deemed earned upon actual voyage being performed and reconciliation of voyage specific amount and in accordance with clause 3 of the Consultancy Agreement.

With the above agreement and the arguments placed, we see the issue thus -

It is the contention that the applicant is offering Consultancy as well as Support services which constitute a composite supply as defined under section 2(30) of the GST 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;

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

As can be seen that a composite supply consists of -

- two or more taxable supplies of goods or services or both, or any combination thereof;
- these taxable supplies are naturally bundled;
- these taxable supplies are supplied in conjunction with each other in the ordinary course of business;
- one of these taxable supplies is a principal supply;

The aforesaid parameters of a composite supply need to be applied to the facts at hand. If we look at the agreement, it says that the foreign ship owner appoints the applicant as a consultant and technical advisor to perform the consulting services specifically set out in Exhibit A attached to the Agreement. Thus, the supply of services rendered by the applicant would be governed by this Exhibit A. At the cost of repetition, let us reproduce the Exhibit A hereunder to understand the scope of supply -

Exhibit A - Description of Consulting Activities Nature of Services:

- 1) As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to 'The company'.
- 2) Track, collate, analyze and monitor Port Development & Logistics data originating from reliable source and update future trends
- 3) Monitor worldwide Economic Development, Bulk Commodity Trade pattern development
- 4) Identify and provide information on Port Costs, Bunker (fuel) trend, Cost Estimation & Analysis.



- 5) Monitor Voyage Execution for smooth and efficient operations,
- 6) so as to optimize performance for 'The company'.
- 7) Examine lay time calculations and arrange for accounts reconciliation for objectives of eventual settlement.
- 8) Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, Global as well as Regional economic development and analysis
- 9) Techno-Commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, Geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict or any other causes which have prospects to impact trade.
- 10) Consultancy Fee is deemed earned upon actual voyage being performed and reconciliation of voyage specific amount and in accordance with clause 3 of the Consultancy Agreement.

In the submission, the applicant has stated thus –

- MCS (Marine Consultancy Service) provided by the Applicant constitutes of consultancy service and support service.
- Consultancy service provided by the Applicant includes analysing commodity, shipping and freight market, finding potential charterers for the foreign ship owners.
- MCS supplied by the Applicant also includes support service provided to the foreign ship owners which largely consists of optimising global trade and revenue therein for the foreign ship owner.
- The support services provided by the Applicant are provided to the foreign ship owner and are not meant to facilitate two parties

In the further submission, we find that the applicant has identified the following services as Consultancy and Support Services, respectively -

Consultancy Services

- 1) As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to 'The company'.
- 2) Track, collate, analyze and monitor Port Development & Logistics data originating from reliable source and update future trends
- 3) Monitor worldwide Economic Development, Bulk Commodity Trade pattern development
- 4) Identify and provide information on Port Costs, Bunker (fuel) trend, Cost Estimation & Analysis.
- 5) Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, Global as well as Regional economic development and analysis
- 6) Techno-Commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, Geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict or any other causes which have prospects to impact trade.

Support Services

- 1) Monitor Voyage Execution for smooth and efficient operations,
- 2) so as to optimize performance for 'The company'.
- 3) Examine lay time calculations and arrange for accounts reconciliation for objectives of eventual settlement.

The above services, as can be seen, are falling in Exhibit A which defines the services to be performed by the applicant. The applicant has contended that supply of Marine Consultancy Services (MCS) consisting of consultancy service and support service is a composite supply as these services (i.e. consultancy service and support service) are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which (i.e. consultancy service) is the principal supply. Having a look at the scope of work as set out in Exhibit A and the agreement clauses, we infer thus –

1. The Agreement dt.01.03.2017 is in respect of a particular contract (MV AM OCEAN PRIDE / MARUBENI CEMENT CHARTER PARTY CONTRACT DATED 3RD MARCH 2017) and is not a general agreement.
2. The services, both consulting and technical services, have been specifically set out in the Agreement.
3. There is a clear understanding that the foreign ship-owner shall request Consultant services on an as-needed basis.



4. There is no guarantee that any or all of the services described in this Agreement will be assigned during the term of this Agreement.
5. It is expressly provided that the foreign ship-owner, at its option, may elect to have any of the services, as set forth in Exhibit A, performed by other consultants or the foreign ship-owner's staff.
6. The applicant can be called on to do any or all of the services or may not be called to do any of the services. The flyer on 'composite supply and mixed supply' as available on the website of the Central Board of Indirect Taxes and Customs says that - *Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators.* In the present case, the fact that the foreign ship-owner has categorically made it clear in the agreement that some of the services may also be availed from other Consultants should leave no doubt that the services are not needed to have been bundled together. It becomes clear from the agreement that the foreign ship-owner doesn't desire to avail all of the services from the applicant as he is at liberty to get the same performed by other consultants or his staff. Even the applicant admits that-

- *each service may be provided by the applicant in isolation*
- *applicant is equipped to supply consultancy service and support service distinctly and occasionally does provides the services separately.*

Thus, if each service, as per the applicant's own admission, can be provided in isolation then one of the indicators of a 'composite supply' as per the flyer on 'composite supply and mixed supply' that "*the different elements are not available separately*" would not be fulfilled. Going by the above, it is clear that the services as set out in Exhibit A cannot be treated as a composite supply. The essential ingredients of a 'composite supply' are -

- *the taxable supplies are naturally bundled;*
- *one of these taxable supplies is a principal supply*

Even if the applicant is called on to do all of the services, the same would still not amount to a composite supply as the foreign ship-owner's natural course of business as understood from the agreement reveals that the services may or may not be assigned to the applicant or could be got done from outside, too. Thus when part of the services are performed by the applicant and the remaining by others, each has equal importance in terms of delivery thereof. By the specific design of the agreement in terms of the convenience of the foreign ship-owner, there cannot be identified any service which could be said to be a principal supply. The perception of the service receiver which is the foreign ship-owner in the instant case that the



services need not be bundled and could be got performed from different service providers or from his own staff, too. We see that the flyer on 'composite supply and mixed supply' has made a very clear observation that the illustrative indicators are not determinative but indicative of bundling of services in ordinary course of business. Hence, when the foreign ship-owner himself perceives the situation as being so, we need not even look at how the other players in the field, view the services to be. The requirement of 'principal supply' would, therefore, not be met in the facts of the instant case. It has been argued that the provision of consultancy service precedes the provision of support service. We feel that this certainly would not tantamount to making the consultancy services as being the principal supply. To the foreign ship-owner both the services are important and none could be identified as a principal supply. Just because one starts first and the other at a later stage would not lead to the prior supply being the principal supply.

7. In view of the specific facts as seen from the agreement, we find no difficulty in concluding that the provision of services under the impugned agreement would not be a composite supply under the GST Act.
8. The arguments in favour of the impugned supply being a composite supply fail to make out a case.

Question 2(a)

In the alternate, where services are provided to foreign ship owners distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:

- (a) Whether consultancy service will qualify as business consultancy service in terms of the scheme of classification of services [Annexure to Notification 11/ 2017 - Central Tax (Rate), dated 28th June, 2017]?*

To answer the question, we refer to the Annexure about Scheme of Classification of Services as appended to the Notification no.11/2017 - Central / State Tax (Rate) [as amended from time to time] as under-

S. No.	Chapter, Section, Heading, Group	Service Code (Tariff)	Service Description
297	Group 99831		Management consulting and management services; information technology services
299		998312	Business consulting services including public relations services

As can be seen, the business consultancy services of sr. no.299 are covered under the Group "Management consulting and management services".

A general understanding of the term 'Management Consultancy' is that it is the practice of keeping organizations to improve their performance, operating primarily through the analysis of existing organizational problems and the development of plans for improvement. As a result



of their exposure to and relationships with numerous organizations, consulting firms are typically aware of Industry Best practices. The consultancies may also provide organizational change management assistance, development of coaching skills, process analysis, technology implementation strategy development or operational improvement services.. Management Consultants often bring their own proprietary methodologies or frameworks, to guide the identification of problems and to serve as the basis for more effective or efficient ways of performing work tasks.

Thus, in the present case, it is very apparent that the consultancy services being provided by the applicant are not in the nature of guiding the ship owning company in the management of the ship owning company but are only in the nature of consultancy in respect of opportunities of marine transportation business, which is one of the support services in respect of marine transport and would therefore required to be classified under support services in transport or in case they are providing other professional, technical and business services or other support services nowhere classified, then they would have to classify their services in one of the below categories after taking into consideration the exact nature of service or services that they provide in a specific case.

If we look at the Annexure, we find the following categories of services -

125	Heading 9967		Supporting services in transport
126	Group 99671		Cargo handling services
127		996711	Container handling services
128		996712	Customs house agent services
129		996713	Clearing and forwarding services
130		996719	Other cargo and baggage handling services
125	Heading 9967		Supporting services in transport
144	Group 99675		Supporting services for water transport (coastal, transoceanic and inland waterways)
145		996751	Port and waterway operation services (excluding cargo handling) such as operation services of ports, docks, light houses, light ships and the like
146		996752	Pilotage and berthing services
147		996753	Vessel salvage and refloating services
148		996759	Other supporting services for water transport nowhere else classified
125	Heading 9967		Supporting services in transport
154	Group 99679		Other supporting transport services
157		996793	Other goods transport services
158		996799	Other supporting transport services nowhere else classified
296	Heading 9983		Other professional, technical and business services
345	Group 99837		Market research and public opinion polling services
346		998371	Market research services
296	Heading 9983		Other professional, technical and business services
356	Group 99839		Other professional, technical and business services
359		998393	Scientific and technical consulting services
364		998399	Other professional, technical and business services nowhere else classified
400	Heading 9985		Support services
444	Group 99859		Other support services
445		998591	Credit reporting and rating services
452		998598	Other information services nowhere else classified
453		998599	Other support services nowhere else classified
700	Heading 9997		Other services
716	Group 99979		Other miscellaneous services
992		999799	Other services nowhere else classified



The applicant would have to identify the category as per the services delivered in terms of Annexure about Scheme of Classification of Services. Thus the classification of their service will depend on the exact nature of service/services they would provide in specific case.

Question 2(b)

In the alternate, where services are provided to foreign ship owners distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:

(b) Whether support service qualifies as “intermediary service” in terms of Section 2(13) of the IGST Act?

The definition of “intermediary” as found in section 2(13) of the Integrated Goods and Services Tax Act, 2017 is as under :

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

As can be seen, an intermediary is to arrange or facilitate supply of services between two or more persons. We are not going by the applicant’s contention but by the agreement copy placed before us. At the cost of third repetition, we reproduce the Exhibit A as under –

Exhibit A - Description of Consulting Activities Nature of Services:

- 1) *As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to ‘The company’.*
- 2) *Track, collate, analyze and monitor Port Development & Logistics data originating from reliable source and update future trends*
- 3) *Monitor worldwide Economic Development, Bulk Commodity Trade pattern development*
- 4) *Identify and provide information on Port Costs, Bunker (fuel) trend, Cost Estimation & Analysis.*
- 5) *Monitor Voyage Execution for smooth and efficient operations,*
- 6) *so as to optimize performance for ‘The company’.*
- 7) *Examine lay time calculations and arrange for accounts reconciliation for objectives of eventual settlement.*
- 8) *Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, Global as well as Regional economic development and analysis*
- 9) *Techno-Commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, Geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict or any other causes which have prospects to impact trade.*
- 10) *Consultancy Fee is deemed earned upon actual voyage being performed and reconciliation of voyage specific amount and in accordance with clause 3 of the Consultancy Agreement.*

We find that in the submissions made before us the applicant has contended that they are providing services only to the ship owners and not to the ship charterers. However on going to the copies of the agreements and detailed submissions made before us by the applicant, we find that they have specifically mentioned that they are providing various services which are broadly covered under two headings i.e. Consultancy services and Support services which can be seen as under :-

Consultancy Services

- 1) *As Specialists in freight market movement, the consultant will analyse commodity, shipping and freight markets, track movement of ships and cargoes and disseminate such information to ‘The company’.*
- 2) *Track, collate, analyze and monitor Port Development & Logistics data originating from reliable source and update future trends*
- 3) *Monitor worldwide Economic Development, Bulk Commodity Trade pattern development*
- 4) *Identify and provide information on Port Costs, Bunker (fuel) trend, Cost Estimation & Analysis.*
- 5) *Preliminary evaluation of cargo volume, trade patterns, trend in commodity movement, port congestion, Global as well as Regional economic development and analysis*



- 6) Techno-Commercial assessment of vehicle type utilization opportunities, infrastructure development in various regions, Geographical impact on global trade in bulk commodities arising from weather, piracy, war, conflict or any other causes which have prospects to impact trade.

Support Services

7) Monitor Voyage Execution for smooth and efficient operations,

8) so as to optimize performance for 'The company'.

Examine lay time calculations and arrange for accounts reconciliation for objectives of eventual settlement.

On verification and examination of the nature of services as above being provided by the applicant it is very apparent that the claim made by them that they are providing services only to the ship owners and have no interaction with the ship charterers while providing these services would not be maintainable because the nature of Support services, being Monitoring of Voyage Execution for smooth and efficient operations and Examination of lay time calculations and arranging for accounts reconciliation for objectives of eventual settlement, are such services which cannot be performed until and unless the applicant interacts and works in coordination with the ship charterers on behalf of the ship owners.

Thus from the very nature of support services that are being provided by the applicant, as visible from the terms of agreements as referred above and submitted to this authority, it is clear that the support services being provided by them would be 'intermediary services' and the applicant would be covered in the definition of an intermediary in terms of Section 2(13) of the IGST Act, 2017.

Having seen thus, we would have to answer the question in the affirmative.

06. In view of the deliberations as held hereinabove, we pass the 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-18/2017-18/B- 26

Mumbai, dt. 18/04/2018

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

Q.1 Whether Marine Consultancy Service ("MCS") provided to foreign ship owners constitutes "composite supply" with the principal supply of consultancy service?

A.1 The question is answered in the negative.

Q.2 In the alternate, where services are provided to foreign ship owners distinctively as supply of consultancy service and support service with separate and demarcated fees for their consultancy service and for support service:



Q.2a Whether consultancy service will qualify as business consultancy service in terms of the scheme of classification of services [Annexure to Notification 11/ 2017 – Central Tax (Rate), dated 28th June, 2017]?

A.2a The question is answered in the negative.

Q.2b Whether support service qualifies as “intermediary service” in terms of Section 2(13) of the IGST Act?

A.2b The question is answered in the affirmative.

An appeal against this order will lie with the Appellate Authority, Advance Ruling Maharashtra, 15th floor, Air India Building, Madame Cama Road, Churchgate, Mumbai-400020, as provided under Section 100 of the GST Act, 2017.

The appeal should be filed in Form GST ARA-02 accompanied by a fee of Rs. 10,000/- pertaining to each Act. It shall be signed by the appellant or his authorised representative.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

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. The Jurisdictional Commissioner of Central Tax.

CERTIFIED TRUE COPY


ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI