

(C.R)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 03RD DAY OF FEBRUARY 2020 / 14TH MAGHA, 1941

WP(C).No.32634 OF 2019(D)

PETITIONER/S:

SUTHERLAND MORTGAGE SERVICES INC
HAVING OFFICE AT 5TH FLOOR, MUTHOOT TECHNOLIS,
CSEZ, KAKKANAD, COCHIN-682037, REPRESENTED
BYMR.ACHUTARAMA GUPTA NESTHALA VIZUPU, AGED 49
YEARS, AUTHORIZED SIGNATORY, SON OF MR.V.K.GUPTA

BY ADVS.
SRI.JOSEPH PRABAKAR
SRI.RAJESH NAIR

RESPONDENT/S:

- 1 THE PRINCIPAL COMMISSIONER
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CENTRAL GST AND CENTRAL EXCISE, KOCHI
COMMISSIONERATE, CENTRAL REVENUE BUILDING, IS.
PRESS ROAD, KOCHI-682018
- 2 THE COMMISSIONER OF STATE TAX
KERALA GST DEPARTMENT, TAX TOWER, KARAMANA,
THIRUVANANTHAPURAM-695002
- 3 ASSISTANT COMMISSIONER,
KAKKANAD RANGE-4, CENTRAL EXCISE BHAVAN, IIND
FLOOR, KATHRIKADAVU, KALOOR, COCHIN-682017

R1 BY SMT.PREETHA S. NAIR, SC,
CENTRAL BOARD OF EXCISE AND CUSTOMS
DR.THUSHARA JAMES, FOR R2.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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W.P.(C).No. 32634 of 2019

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Dated this the 3rd day of February, 2020

J U D G M E N T

The prayers in the aforecaptioned Writ Petition (Civil) are as follows:

- (i) *Issue a writ of certiorari or any other appropriate writ, order or direction as this Hon'ble Court deems fit and proper in the circumstances of the case, calling for the records leading to the issue of Exhibit P-2 Order and after scrutinizing the same, to strike down and quash the same and to hold that in the given set of facts available before the AAR, the transaction in question would not attract GST since the subject transaction would qualify for "Export of Services" in terms of Section 2(6) of IGST Act, 2017.*
- (ii) *issue such other appropriate writ, direction or order as deemed fit by this Honourable court, considering the facts and circumstances of the case, in the interest of justice."*

2. Heard Sri.Joseph Prabakar, learned counsel appearing for the petitioner, Smt.Preetha S.Nair, learned Central Government Counsel (CGC) appearing for R-1 & R-3 and Dr.Thushara James, learned Government Pleader appearing for R-2.

3. The case projected in this Writ Petition (Civil) is as follows:- The petitioner, M/s.Sutherland Mortgage Services Inc., now functioning in the office premises in the Cochin Special Economic Zone, is a branch office of its principal, M/s. Sutherland Mortgage Service Inc. USA. The petitioner is stated to be engaged in the business of providing information technology enabled services such

as mortgage orientation, primary servicing, special servicing, cash management and analytics & reporting. It is stated the principal company, M/s.Sutherland Mortgage Service Inc. USA. is incorporated in the United States of America and, as per the applicable laws of that country, the principal company which is engaged in such mortgage business is prevented from outsourcing its work to any other third party. Therefore, by the compulsion of the US laws, the principal company has made an intra company agreement with the petitioner, M/s.Southerland Mortgage Services Inc. (the latter being only the branch office of the former principal company) in order to provide services to customers outside India. It appears that the above intra company agreement has been entered into only for the purpose of transfer pricing regulations and the petitioner, which is only a branch of the principal company, has no separate legal existence apart from the principal company and that the petitioner, which is only a branch, has no separate legal existence and that the legal entity is the principal company. That M/s.Sutherland Mortgage Services Inc. USA has also entered into agreement with customers outside India for providing services from the USA and India branch. That the principal company incorporated in USA is reimbursing the branch at India for

the costs incurred to perform the services and the branches like the petitioner issue commercial invoice to the corporate head office at USA. It is pointed out that the services are provided by the petitioner branch directly to the customers located outside India and that the petitioner branch is not providing those services to the head office in USA and that therefore, those services would eminently qualify as 'Exporter services" which is considered zero rated supply as envisaged in Sec. 16 of the Integrated Goods & Services Tax Act, 2017 (IGST Act). On this premise, the petitioner has filed Ext.P-1 application for advanced ruling under Sec. 97 of the Central Goods & Services Tax, 2017 (CGST Act) and the Kerala Goods & Services Tax Act, 2017 read with Sec. 20 of the IGST Act, 2017, Rule 104 of the CGST Rules, 2017 and the Kerala GST Rules, 2017. The Advance Ruling authority as per the impugned Ext.P-2 order has held that the advance ruling as sought for in Ext.P-1 application cannot be granted as the issue of "determination of place of supply", does not come within the permissible issues to be determined by the Advance Ruling Authority in terms of Sec. 97(2) of the CGST Act, 2017 and therefore the Advance Ruling Authority lacks jurisdiction to entertain Ext.P-1 application. It is pointed out that Sec. 100 of the CGST Act provides

for a statutory appeal before the appellate authority concerned only if the impugned advance ruling is rendered under Sec. 98(4) of the CGST Act and not against the order of rejection as in the nature of Ext.P-2 herein, which has been purportedly issued under Sec. 98(2) of the CGSt Act, wherein the plea for advance ruling is rejected at the threshold stage. The point on which advanced ruling has been sought for by the petitioner is on the following aspects:

“Whether supply of services by India Branch of Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the intra company agreement entered into by the said branch with the principal company incorporated in USA.”

(It appears that Ext.P-1 application and the impugned Ext.P-2 order use the word, “*Inter company agreement*” and now it appears that it is common ground that the said usage is a misnomer and the correct expression in that regard, in the context of the case of the petitioner should actually be “*intra company*”, as the specific case of the petitioner is that the petitioner is only a branch of the principal company incorporated in USA and that latter alone is the separate legal entity, whereas the former does not have any separate legal existence, as it is only a branch of the principal incorporated in USA.).

4. It has been noted in the impugned order that as per the

contract entered into by the principal company incorporated in USA with the customer located outside India and the India branch provide services directly to the customers located in USA from India and that the petitioner branch is the service provider and that the customers concerned located outside India are the recipient.

5. Sec. 2 (71) of the CGST Act defines “*location of the supplier of services*” as follows:

“Sec. 2: Definitions.-- *In this Act, unless the context otherwise requires,--*

(1)..

xxx

xxx

xxx

(71) "*location of the supplier of services*" means,--

(a) *where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*

(b) *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*

(c) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and*

(d) *in absence of such places, the location of the usual place of residence of the supplier.”*

6. In the impugned order it has been noted that in the instant case, the location of supplier is a place for which registration has been obtained and that a perusal of the scope of work and the corresponding invoices would make it clear that the services are actually provided from the India branch to the customers in USA and not to the corporate head office located in USA. Further it is also

noted that the services provided by the India branch cannot be reviewed by the principal company incorporated in USA before the same is delivered to the customers located outside India and that the services are directly delivered to the customers by the India branch without any consolidation at the principal company in USA. Further that Sec. 2(93) of the CGST Act defines “recipient” as follows:

“Sec. 2: Definitions.-- *In this Act, unless the context otherwise requires,--*

(1)...

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(93) "recipient" of supply of goods or services or both, means--

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.”

So the definition of “recipient” makes it clear that the the recipient is the one who is liable to pay consideration, etc. Further, it is also noted that as per the arrangement, the customers are obliged to make payment to the principal company incorporated in USA based on the invoices of the service and in turn, the corporate head office of the principal company reimburses the cost to perform such services to

India branch. Further that thus the consideration in foreign exchange is received by the India branch based on the intra office invoice as per the abovesaid intra company agreement as between the principal company and the petitioner which is an India branch. In that regard, it is to be noted that going by the definition of “recipient” (service receiver) as per Sec. 2(93) is a person, who is liable to make the payment irrespective of the fact as to whether or not, he/she actually makes payment or someone else makes payment on his/her behalf.

7. Sec. 2(6) of the Integrated Goods and Services Tax, 2017 defines “*export of services*” as follows:

“Sec. 2: Definitions.-- In this Act, unless the context otherwise requires,--

(1)
xxx xxx xxx

(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.”

8. Going by the definition of “*export of services*” as per Sec. 2(6) of the IGST Act, the the supplier of service and the recipient of service shall not merely be establishments of a distinct person in

accordance with Explanation 1 in Section 8 of the IGST Act. Sec.8 of the IGST Act, more particularly Explanation 1 thereof provides as follows:

“Sec.8: Intra-State supply.--

(1) Subject to the provisions of Section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply: Provided that the following supply of goods shall not be treated as intra-State supply, namely:--

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;*
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or*
- (iii) supplies made to a tourist referred to in Section 15.*

(2) Subject to the provisions of Section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply: Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1.- *For the purposes of this Act, where a person has,--*

- (i) an establishment in India and any other establishment outside India;*
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,*
then such establishments shall be treated as establishments of distinct persons.

Explanation 2.- *A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”*

(Emphasis supplied).

9. In the instant case, the specific plea of the petitioner is that the “recipient of service” is a customer located outside India and that the petitioner India branch renders services to those customers outside India under the intra company agreement entered into by the

India branch with the principal company incorporated in USA and that therefore, the services are rendered by the petitioner India branch directly to the overseas customers and not to the principal company incorporated in USA. It is thus pointed out by the petitioner that the services in question are rendered by the petitioner India branch directly to the customers located outside India and such services are thus consumed by such customers located outside India. It is pointed out that as the petitioner India branch is thus not directly rendering service to the principal company incorporated in USA (but directly to the customers located outside India) the restriction in clause (v) of Sec. 2(6) of the IGST Act read with Explanation 1 of Sec. 8 of the IGST Act cannot be pressed into service against the petitioner and that therefore the service in question would eminently and fully fulfill the definition of “export of services” as defined in Sec. 2(6) of the IGST Act. In that regard it is pointed out by the petitioner that if the petitioner India branch had directly rendered the service to its principal company incorporated in USA and thereafter, the latter had in turn made available those services to the customers located outside India, then the scenario would have been different, etc.

10. After consideration of these aspects, and also more

particularly, the definition of “export of service” as per Sec. 2(6) of the IGST Act, the Advance Ruling Authority has proceeded to observe on page 4 of the impugned Ext.P-2 order that one of the important requirements of supply of any service to be treated as 'export of service' is that the place of supply of service must be outside India. The provisions for determination of the place of supply of services where the location of the supplier of services or location of recipient of services, is outside India, are contained in Sec. 13 of the IGST Act.

11. In this regard, it may also be apposite to refer to the definition of “import of service” as per Sec. 2(11) of the IGST Act, which provides as follows:

“Sec.2(11)"import of services" means the supply of any service, where--
(i) the supplier of service is located outside India;
(ii) the recipient of service is located in India; and
(iii) the place of supply of service is in India.”

12. Sec. 13 of the IGST Act deals with “*Place of supply of services where location of supplier or location of recipient is outside India.*” Sec. 16 deals with “Zero rated supply”. Thereafter, the Advance Ruling Authority has proceeded to observe that the entire issue is intrinsically related to determination of “*place of supply*” or the service by the petitioner and has noted that in this case, the supplier of services is located in India and the recipient of services is

located outside India. Further that as per Sec. 13 of the IGST Act, the liability to pay tax is dependent upon 'place of supply'.

13. Secs.95 to 100 of the CGST Act, 2017 provide as follows:

“Sec.95: Definitions.--

In this Chapter, unless the context otherwise requires,--

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) "Appellate Authority" means the Appellate Authority for Advance Ruling referred to in Section 99;

(c) "applicant" means any person registered or desirous of obtaining registration under this Act;

(d) "application" means an application made to the Authority under sub-section (1) of Section 97;

(e) "Authority" means the Authority for Advance Ruling referred to in Section 96.

Sec.96 of the CGST Act, 2017 reads as follows:

“Sec. 96: Authority for advance ruling.--

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.”

Sec.97 of the CGST Act, 2017 reads as follows:

“Sec.97: Application for advance ruling.--

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, 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.*

Sec.98 reads as follows:

“Sec. 98: Procedure on receipt of application.--

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

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

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

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant: Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Sec. 99 reads as follows:

“Sec. 99: Appellate Authority for Advance Ruling.--

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.”

Sec.100 reads as follows:

“Sec.100: Appeal to Appellate Authority.-- (1) *The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of Section 98, may appeal to the Appellate Authority.*

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.”

14. In this context, it is relevant to note that Sec. 20 of the IGST Act, which deals with application of provisions of the CGST Act and the said Section 20 of the IGST Act provides that subject to the provisions of the said Act and the rules made thereunder, the

provisions of the CGST Act relating to the matter enumerated thereunder shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under the IGST Act., etc. In that regard, clause (xviii) of Sec. 20 coming under Chapter IX of the IGST Act expressly enumerates “advance ruling” as one of the matters concerned and hence in view of the provisions contained in Sec. 20 (xviii) of the IGST Act, the abovesaid provisions contained in Secs. 97 to 100, etc. of the CGST Act relating to advancing ruling shall mutatis mutandis, apply as far as may be in relation to integrated tax, as they apply in relation to central tax, as if they are enacted under the IGST Act.

15. After appreciating the abovesaid aspects, the Advance Ruling Authority has proceeded to hold that as per the submissions of the petitioner, it is evident that the question raised is whether the supply made by the petitioner would qualify as “export of service” as defined in Sec. 2(6) of the IGST, 2017 and that therefore, the question would essentially and substantially involve the determination of place of supply, etc. Thereafter, the Advance Ruling Authority has proceeded to hold that the issue to be determined is one relating to the place of supply of service and then such an aspect may not be

subject matter of an Advance Ruling as envisaged in Sec. 97, for the simple reason on the ground that the issue relating to the “determination of supply of service” as in the instant case, is not covered by any of the provisions contained in Sec. 97(2) of the CGST Act. Thus it is to be noted that the Advance Ruling Authority after having held that in this case the supply of service is located in India and the recipient of service is located outside India and in this case as the supply of service is located in India and the recipient of services is located outside India, the Advance Ruling Authority has thereafter proceeded to take the view that the other issue to be determined, viz., the “place of supply of service” cannot be the subject matter of advance ruling in terms of Sec. 97 of the CGST Act, etc. for the simple reason that the determination of the issue of place of supply, is not enumerated in Sec. 97(2) and on this premise, the Advance Ruling Authority has chosen to reject Ext.P-1 application given by the petitioner at the threshold stage in terms of Sec. 98(2) of the CGST Act.

16. By placing reliance on the abovesaid impugned view, the Advance Ruling Authority has held that as the Advance Ruling Authority is creator of the statute, it has to function strictly within the

legal bounds mandated by said Act and that as the place of supply is covered by Sec. 97(2) of the Act, the said Authority is helpless to answer the question raised in the application as it is lacking jurisdiction to decide the said issue and the jurisdiction of the said Authority does not extend to the questions on determination of “place of supply”.

17. Both sides have been heard. Smt.Preetha.S.Nair, learned Central Government Counsel appearing for R-1 & R-3 and Dr.Thushara James, learned Prosecutor appearing for R-2 have strongly urged that the abovesaid view taken by the Advance Ruling Authority is legally correct and does not require any interdiction in this judicial review proceedings. Essentially, they would argue that the Advance Ruling Authority has considered all the relevant aspects of the matter in the correct legal perspective, after taking into account all the relevant facts and they would argue that the crucial issue to be determined in this case, which is in relation to the determination of the issue of place of supply, cannot be the subject matter of advance ruling, as the said issue relating to determination of place of supply, is not covered within the ambit of Sec. 97(2) of the CGST Act and hence the Advance Ruling Authority lacks jurisdiction to decide on

the said issue and that the Advance Ruling Authority has rightly refused to answer the query in that regard by passing Ext.P-2 order in terms of Sec. 97(2) of the Act.

18. It is common ground that if an order is passed under Sec. 97(2) of the CGST Act, then the same is not appealable in terms of Sec. 100 of the Act as sub section (1) of Sec. 100 clearly provides that only if the applicant concerned is aggrieved by any advance ruling pronounced under Sec. 98(4) of the Act that the appeal would lie. Since the stand of the Advance Ruling Authority is that it has rendered its decision under Sec. 98(2) of the CGST Act, an order in the nature of Ext.P-2 cannot be the subject matter of an appeal under Sec. 100 of the said Act. Since that is the position there cannot be any dispute that since the petitioner does not have any alternative statutory remedy, he can challenge the same mainly by way of judicial review in writ proceedings under Art. 226 of the Constitution of India. No dispute has been raised by the respondent regarding the maintainability of the present writ proceedings. The essence of argument of the respondents is to the effect that the impugned view taken by the Advance Ruling Authority in Ext.P-2 is fully correct and that the Writ Petition is liable to be dismissed.

20. Whereas, Sri. Joseph Prabakar, learned counsel appearing for the petitioner would strongly urge and plea that the said view is legally wrong and faulty and that the Advance Ruling Authority has jurisdiction to entertain the application on merits and then to determine all the issues including the issue relating to the determination of the place of supply as aforesaid.

20. It would be pertinent in that regard to focus mainly on sub section (2) of Sec. 97 of the CGST Act, which reads as follows:

“Sec. 97: Application for advance ruling.-- (1)

xxx

xxx

xxx

(2) The question on which the advance ruling is sought under this Act, 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.”

21. A reading of clauses (a) to (g) of sub section (2) of Sec. 97 of the CGST Act would make it clear that 7 items are enumerated as per clauses (a) to (g) of sub section (2) of Sec. 97 and all those clauses other than clause (e) thereof, are in specific terms. Whereas clause (e)

of sub section (2) of Sec. 97 of the CGST Act clearly mandates that the larger issue of “*determination of liability to pay tax on any goods or services or both*” would also come within the ambit of the questions to be raised and decided by the Advance Ruling Authority on which advance ruling could be sought and rendered under the said provisions. Whereas Clauses (a), (b), (c), (d), (f) & (g), ie. the clauses other than clause (e), are in specific “pigeon holes” and the provision as per clause (e) of sub section (2) of Sec. 97 is in wide terms and the Parliament has clearly mandated that the latter issue of determination of liability to pay tax on any goods or services or both, should also be matters on which the applicant concerned could seek advance ruling from the Advance Ruling Authority on which the said authority is obliged to render answers thereto. The Parliament has made the said provision envisaging that in transactions in nature, where India is now a growing economy and has to make its substantial performance in economic growth and development not only domestic investments, but even foreign investments would also be heavily required and that host of tax laws has been subsumed into the overarching umbrella of the goods and sales tax regime introduced by the Parliament and the Parliament would have

certainly taken cognizance of the fact and has intended that very often applicants would require clarity and precision about various aspects of taxation in the transactions and that there should be certainty and precision in those matters, so that the applicant concerned is given the right to seek advance ruling even in such a larger issue as the one as per clause (e) of Sec. 97(2) of the CGST Act, which deals with issue of determination of liability to pay tax on any goods or services or both.

22. In cases of this nature, entities which come with foreign investment in India would also require certainty and precision about the tax liability so that they can plan and decide in advance about their functioning as business entities in India so that its efficacy is maximised so as to bring in a “win win situation” not only for such foreign entities, who are permitted to make such investments in India, but also for the economy of India. It is in the light of these dynamic scenario in the fast changing global economy that the Parliament has taken a very proactive role with a very wide vision, the Parliament in its wisdom has decided to mandate such a provision as in clause (e) of Sec. 97(2), whereby the applicant is empowered to seek advance ruling even on the said larger issue of

determination of liability to pay tax on goods or services or both and in view of such a scenario, the Advance Ruling Authority is obliged to entertain such plea and consider it on merits and then render its opinion/answer to such a plea that may be raised and to render its advance ruling on those aspects in accordance with the provisions contained in the abovesaid Acts.

23. In the instant case, it is true that the issue relating to determination of place supply as aforestated is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Sec. 97(2) of the CGST Act, but there cannot be any two arguments that the said issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfills the definition of place of service, would also come within the ambit of the larger of issue of “*determination of liability to pay tax on any goods or services or both*” as envisaged in clause (e) of Sec. 97(2) of the CGST Act. The Advance Ruling Authority has proceeded on a tangent and has missed the said crucial aspect of the matter and has taken a very hyper technical view that it does not have jurisdiction for the simple reason that the said issue is not expressly enumerated in Sec. 97(2) of the Act. This Court has no hesitation to hold that the

said view taken by the Advance Ruling Authority is legally wrong and faulty and therefore the matter requires interdiction in judicial review in the instant writ proceedings. In that view of the matter, it is ordered that the abovesaid view taken by the Advance Ruling Authority is legally wrong and faulty and is liable to be quashed and accordingly declared and ordered. Consequently, it is ordered that the said rejection order as per Ext.P-2 will stand quashed and Ext.P-1 application will stand remitted to the Advance Ruling Authority concerned for fresh consideration and decision in accordance with law. The Advance Ruling Authority will immediately permit the petitioner to submit any further written submission in the matter with any additional materials. This the petitioner will do within a period of two weeks from the date of receipt of a certified copy of this judgment. Thereafter, the Advance Ruling Authority will immediately give notice of personal hearing to the petitioner and should also afford a reasonable opportunity of being heard to the petitioner, through authorised representative/ counsel, if any, and then should consider all relevant aspects of the matter and should render an advance ruling in the matter in terms of Sec. 98(4) of the CGST Act, etc. The advance ruling as aforesaid in terms of Sec.98(4) of the

CGST Act may be duly rendered by the Advance Ruling Authority without much delay, preferably within a period of 3 to 4 months from the date of production of a certified copy of this judgment.

24. Before parting with this case, it has to be borne in mind that India is at the cusp of great global changes and there cannot be any two opinions for anyone, who cherishes the best interests for this country, that with extreme hard work and industry, we have to progress economically, socially and in all spheres of our life. It has been in the consistent policies of the various Governments, both at the Union level and at the levels of the States concerned, that foreign investments, apart from domestic investments, are also highly needed for our economy, subject to the regulatory framework projected by laws. In cases like this, a foreign entity like the principal company in this case, would like to have precision and certainty about tax liability so that they can accordingly modulate their future outlook and it goes without saying that the executive authorities concerned including the taxation authorities will have to take the correct perspective and in accordance with the legislative policy framed as per the wisdom of the Parliament and the State Legislatures to ensure that there is certainty and precision in taxation liability, etc. so that the domestic investors

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as well as foreign investors, will get more incentive to continue and increase their level of activities, for the overall better development and growth of our economy.

With these observations and directions, the above Writ Petition (Civil) stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

**EXHIBIT P1 COPY OF THE APPLICATION DATED 21.12.18 FILED
 UNDER SECTION 97(1) OF CGST ACT**

EXHIBIT P2 COPY OF ORDER DATED 24.05.2019