Taxability of warranty services in the hands of the Indian service provider

CA Shilpi Jain
Shruti Agarwal
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In respect of many of the durable goods, the manufacturers provide after sale warranty services i.e. for a specified period of time after sale of the product, the **manufacturer assumes responsibility** to provide service for any defect in the product and/or replaces any part free of cost (or as mentioned in the agreement in this regard). In some cases, the manufacturer is a person located outside India who supplies the equipment or any good through an Indian dealer/intermediary and then also appoints or selects a person (who in many cases is the Indian dealer itself) who would take care of the after sale or the warranty related services to the customers.

Now the issue that arises is whether the Indian dealer/intermediary is required to pay GST on the services provided towards the after sale or the warranty, to the Indian customer of the foreign supplier. In this regard reference is made to a recent advance ruling by the Karnataka AAR in the case of M/s. Volvo-Eicher Commercial Vehicles Ltd. - 2019(10) TMI 564, to understand the department's viewpoint. The facts in brief are as follows:

a. The Applicant is in the business of selling Volvo branded trucks (appointed as distributor by Volvo Sweden) and thereafter providing after sale support services, including warranty services for Volvo branded trucks.
b. The cost of warranty services is included in the cost of sale of such trucks or buses.
c. The applicant does the servicing of warranty claims of the customers and the onus to reimburse such expenses incurred for discharging the warranty obligation lies with Volvo Sweden. The transaction between the Applicant and the customer is depicted as follows;

    - The customer in case of repairs or warranty claims approaches the Applicant.
    - Applicant processes the warranty claims.
    - The services are provided upon the acceptance of claim/free replacement.
    - Applicant invoices Volvo Sweden for the reimbursement of expenses.
    - The reimbursement expenses include cost of parts and cost of services.

- Volvo Sweden issues credit note to the applicant or dealers in form of Warranty Credit Note Acceptance" (WCA) and reimburses the expenses in foreign currency.

The advance ruling is sought to answer whether the warranty service provided by the Applicant amounts to export of services to Volvo Sweden and hence zero rated under GST law? In this regard, the Authority has observed that the Applicant has sold the product which is bundled with the service. Here, consideration is paid by Volvo, Sweden and the recipient is the customer, who is in India. Hence, there is no export of service as it is a transaction within the country and is a composite supply of goods or services to the customers by the applicant.

Comments

The ruling has failed to consider the following aspects:

a. The following transactions are involved in the present case:
   i. **Sale** of buses or trucks to the customers by Volvo Sweden through its distributor i.e. the Applicant. As per this transaction, what the applicant does is the sale of the trucks or buses and makes margin from such sale. Further, it is important to note that the manufacturer is the person who is assuming responsibility for the after sale or the warranty services. The amount towards such service (which is included in the sale price to the customer) accrues to the manufacturer only as the applicant is only entitled to the margin from the sale.
   ii. **After-sale services**, which in the instant case is performed by the applicant. This is in the nature of a sub-contract i.e. the primary responsibility to provide this service to the customer is that of the manufacturer (as per the sale contract warranty services are to be provided) and the manufacturer has sub-contracted this to the applicant. As per this sub-contract, the actual after-sale services are provided by the applicant to the manufacturers' Indian customers.

   It is important to note that both the above transactions are different and cannot be viewed as one transaction between the 3 parties involved. Thereby the authority's observation that it is a transaction of a composite supply by the applicant to the Indian customer is not appropriate for the reason that such composite supply is not by the applicant but the price is a composite price representing the amount towards the product and the after sale services by the manufacturer.
b. The Authority has observed that the customer is the recipient of the service w.r.t the after-sale service. In this regard, the Authority has failed to note the definition of the 'recipient' in section 2(93) of the CGST Act, 2017 to mean a person who is liable to pay

the consideration. In the instant case, to the extent the manufacturer is liable to pay the consideration to the applicant for the after-sale service, he is the recipient, thereby satisfying the conditions of 'export of service'

Further, in similar cases, it has been held under the earlier laws that the services are received by the foreign recipient and thereby an export of service

a. In Re: Pricewaterhousecoopers Pvt. Ltd 2012 (28) S.T.R. 659 (Commr. Appl.)
b. Manish Agarwal Vs Commr. Of Service Tax, Ahmedabad 2012 (27) S.T.R 155 (Tri-Ahmd)
c. KSH International Pvt. Ltd. Vs Commissioner Of C. Ex., Belapur 2010 (18) S.T.R 404 (Tri-Mumbai)
d. Blue Star Ltd Vs Commissioner Of Central Excise, Bangalore 2008 (11) S.T.R 23

However, it is to be noted that in a similar case of Arcellor Mittal Projects India Pvt. Ltd. 2019 (28) GSTL 315 (Tri. – Mum.), the matter has been referred to the Larger Bench to answer whether it can be said that the services are consumed abroad when such services are actually used for the Indian business of the foreign entity?

Though, the above can be differentiated from the scenario under GST for the reason that under service tax (during the period under consideration) the condition for export was the usage of the service in a business abroad. However, under GST the conditions for export are clear as per which, if the place of supply is abroad and the other conditions of export are fulfilled then it would be an export of service. Hence, the outcome of the above reference to the Larger Bench should not have any effect on the position under GST.

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