

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AABCB2242F1Z6
Legal Name of Applicant		BILCARE LIMITED
Registered Address/ Address provided while obtaining user id		1028, Shiroli, Rajgurunagar, Pune-410505
Details of application		GST-ARA, Application No. 117 Dated 31.01.2019
Concerned officer		Dy. Commr. of S.T.(PUN-VAT-E-624), Pune.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in brief)	The applicant is a global leader and an innovation-led packaging solutions provider that partners with the pharmaceutical industry to improve patient healthcare outcomes. We endeavor to deliver effective and affordable solutions that enhance the speed and quality of drug discovery and help build and protect brands by ensuring the delivery of genuine medicines to patients.
Issue/s on which advance ruling required		(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

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

1. Determining whether the various services provided to foreign clients i.e. situated outside India and for which the place of supply is in the taxable territory shall be liable to Integrated Tax (herein referred to as "IGST") or Central Goods and Service Tax (herein referred to as "CGST") and State Goods and Service Tax (herein referred to as "SGST") for the purpose of levy of Goods and Services Tax (GST) under the GST Law.

2. In case it is ruled that IGST is payable, the procedure to be followed for payment of IGST as the GST portal does not permit the payment of IGST where the place of supply is indicated as state of Maharashtra.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to

any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

02. FACTS AND CONTENTION – AS PER THE APPLICANT

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

1. M/s. Bilcare Ltd. (herein referred to as the "Applicant") is a company engaged in the following
 - Applicant is an innovation-led packaging solutions provider that partners with the pharmaceutical industry to improve patient healthcare outcomes. We endeavor to deliver effective and affordable solutions that enhance the speed and quality of drug discovery and help build and protect brands by ensuring the delivery of genuine medicines to patients.
 - Applicant PPI offers Innovative Pharmaceutical Packaging Solutions comprising of a wide range of specialty Polymer Films and Aluminum Foils mainly used for packaging of solid dosage pharmaceutical products.
 - Applicant GCS provides Global Clinical Material Supplies for new drug discovery projects.
 - Applicant Technologies provides track and trace, authentication and Anti counterfeit (nCID – nonclonableID) solutions for product & people ID authentication and security.
2. The applicant's GCS (Global Clinical Material Supplies) division provides various types of services to its foreign clients. The foreign clients can be a Pharmaceutical Company or a CRO (Clinical Research Organization). The standard quotation submitted to Clients and sample PO received from those Clients for the various services provided by the GCS Division for which the ruling is sought is attached as **Annexure-1**.

Statement of nature of services provided and questions thereto;

Nature of services provided:

1. Under Storage and Distribution Services quotation, applicant provides services of receipt, storage, distribution, return & destruction of IPs (Investigational Products/Drugs) in India.

(Refer Annexure 1 (Pages 11 to 16) of standard quotation - Pages: 2 to 3 of Storage and Distribution Services quotation for detailed explanation of nature of services). For a brief description of the services provided refer Table 1 below:

Table 1:

Services	No. of Units	Unit Rate in USD	Total Cost in USD	Cost Assumptions
Logistic Project Management Fees	21	590	12390	This is the cost of Logistic Project Management fees for 21 months and it will be charged based on utilization per month @ USD 590. (From period Apr 2017 to Dec 2018)
Receipt Reconciliation fees	2	148	296	This is the cost of receipt and reconciliation of drug product. It is assumed that Bilcare will receive vials in 2 receipts and this will be charged as per utilization of man hours.
Storage Cost (2-8 Deg C)	21	299	6279	This is the storage cost of drugs for 21 months. We have assumed that 1 cubicles (1 product) of 0.5 cubic meter size will be required per month at 2-8 Deg C to store drug product and will be charged as per the utilization @ USD 299 per 0.5 Cu. Mtr.



				Cubicle per Month for 2-8. Deg C. (21 months X1 cubicle/month=21 Bins) Note: If we receive both the products (Herceptin and Hercules) then 2 cubicles of 0.5 cu m will be charged for 21 months period (21 months X2 cubicle/month=42 Bins= 12558 USD)
Storage Cost for PK Retain (2-8 Deg C) kits	12	299	3588	This is the storage cost of PK retains received from site at end of the study for min. 6 months. We have assumed that 2 cubicles (for 2 products) of 0.5 cubic meter size will be required per month at 2-8 Deg C to store Herceptin and Hercules and will be charged as per the utilization @ USD 299 per 0:5 Cu. Mtr. Cubicle per Month for 2-8 Deg C. (6 months X2 cubicle/month=12 Bins)
Distribution Processing Fee (2-8 DegC)	48	100	4800	This cost includes the cost of pick and pack service for 48 shipments to 4 sites in India per site 12 shipments. It is assumed each shipment would have 11-17 vials and 1 shipper. Hence, the total distribution processing fees would be charged on the basis of utilization shipper per shipment @USD 100. (48 shipments x 1 shipper per shipment=48 shippers)
Distribution Processing Fee (2-8 Deg C) Shipment to Ireland Depot	1	200	200	This cost includes the cost of pick and pack service for 1shipment to Ireland depot. It is assumed that shipment would have approx 34 vials (Total PK retains - 23 Herceptin kits and 11 Hercules kits the total distribution processing fees would be charged on the basis of number of shipments per shipment @USD 200.
Freight Charges (2-8 Deg C)	48	459	22032	These are the freight charges for 48 shipments to site in India. Each shipment will be with 1 shipper. (Shipments.at 2 to 8 Deg C in Validated shipper with one temperature monitoring device) <i>Note: Gov. service tax will be extra @15%</i>
Freight Charges for return shipment (2-8 Deg C)	20	459	9180	These are the freight charges for 4 return shipments from site to Bilcare depot. Each shipment will be with 1 shipper. (20 shipments at controlled temperature condition with validated shipper with temperature monitoring device either for redistribution or as PK retains) <i>Note: Gov. service tax will be extra @ 15%</i>
Return Receipt Reconciliation (2-8 Deg C)	20	148	2960	This is the cost of return receipt and reconciliation per site. We have assumed there will be 20 return shipments from sites and it will be charged based on utilization per return receipt reconciliation as per utilization.
Record Retention Fees	21	83.50	1753.5	This is the cost of retention of project specific documents for 21 months.
Sub-Total			63478.5	
Add: Government Service Tax @15%			9521.8	
Total Cost in USD			73000.3	

2. Under Packaging Services quotation, the applicant provides services of Primary packaging which includes Blistering, Bottling; Liquid & Ointment Filling etc. of Tablets, Liquids, Ointments, Creams, Etc and Secondary packaging which includes Labelling, Kitting, Block Box Preparation, Cartoning, etc. of Primary packed material and also storage, distribution and destruction of primary and secondary packed material if required by the client.

[Refer Annexure 1 (Pages 19 to 24) of standard quotation - Page No. 20 of Packaging Services quotation for detailed explanation of nature of services). For a brief description of the services provided refer Table 2 below

Table 2:

SUMMARY OF PRICES FOR SERVICES PROVIDED BY BILCARE (Currency USD) Cost Head	Cost Assumptions	Cost in USD
Secondary Packaging and Labelling fees	This cost includes: 1. One Batch setup 2. Additional Labelling of IP Monocarton containing Vial: Application of one single panel label of new retest date to Vial and Vial Monocarton and sealing of vial monocarton. 3. Activity will be carried out at 15-25 Deg C. 4. Assumed relabeling of 202 vials and mono cartons.	3,691.00
Label Cost	This is cost of 1. Label design/setup 2. Preparation of label proofs 3. Printing of New Retest Date Labels 4. Label Inspection and Release 5. Printing of Total 210 labels 6. Label language: English Note: Tamper seals will be provided by PPD	252.00
Storage Cost (Shelf- Labels)	Storage cost includes storage of labels for 1 month during packaging run. The storage of labels will be charged as per actual utilization @ USD 83 per shelf per month.	83.00
Total Cost in USD		4,026.00
Add Government Service Tax @ 15% in USD		603.90
Grand Total in USD (Including Government Service Tax 15%)		4,629.90

A. Question 1: Common for all the above-mentioned nature of services provided

Determining whether the various services provided to foreign clients i.e. situated outside India and for which the place of supply is in the taxable territory shall be liable to **Integrated Tax** (herein referred to as "IGST") or **Central Goods and Service Tax** (herein referred to as "CGST") and **State Goods and Service Tax** (herein referred to as "SGST") for the purpose of levy of Goods and Services Tax (GST) under the GST Law.

B. Question 2:

In case it is ruled that IGST is payable, the procedure to be followed for payment of IGST as the GST portal does not permit the payment of IGST where the place of supply is indicated as state of Maharashtra.

3.1 Statement containing the applicant's interpretation of law:

1. Section 9(1) of CGST Act, 2017 states that Central Goods and Service Tax (herein referred to as "CGST") shall be levied on all intra-State supplies of services. The relevant extract of the section is reproduced below:

9. (1) Subject to the provisions of sub-section (2); there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and

at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) (3) (4) (5)

2. Section 9(1) of Maharashtra Goods and Service Tax CGST Act, 2017 states that Central Goods and Service Tax (herein referred to as "SGST") shall be levied on all Intra-State supplies of **services**.

3. Further, Section 5(1) of IGST Act, 2017 states that Integrated Goods and Service Tax (herein referred to as IGST) shall be levied on all Inter-State supplies of services. The relevant extract of the section is reproduced below:

5. (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

(2) (3) (4) (5)

Therefore, for the purpose of levying IGST or CGST and SGST on a supply we first need to determine whether the supply is an Intra-State supply or Inter-State supply of services. Sections 7 & 8 of the IGST Act, 2017 deals with determination of the nature of supply:

4. Both, Section 7 & Section 8 determines the nature of supply having regard to the 'location of supplier' and 'place of supply'. In the instant case, the location of supplier, location of service recipient and place of supply is as below:

a. **Location of supplier of service** – The location of supplier (i.e. the applicant) is in Pune. Further, the applicant is registered under GST in the State of Maharashtra.

b. **Location of recipient of service** - The location of recipient is outside India. Further, the service recipients are Pharmaceutical Companies or a CRO (Clinical Research Organization) situated outside India.

c. **The place of supply** - Since the service recipient is located outside India, place of supply of services provided shall be determined as per the provisions of **Section 13 of the IGST Act**. Further, the place of supply for all the services provided by the applicant shall be determined as per the applicable sub sections of Section (13)(3) and thus the place of supply for all the services, will be in the taxable territory i.e. in India.

5. **Determination of Nature of Supply**

1. As per Section 8(2) of IGST Act, where the 'location of supplier' & 'place of supply' are in same State, it will be treated as "intra-state supply". The said section is reproduced below:

" 8. (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."



However, the said section reads as "subject to provisions of Section 12". Here, it is important to interpret the meaning of the words '**subject to the provisions**'. The submissions are as follows –

- a. The same is interpreted in " Words and Phrases of Central Excise, Customs & Service Tax". (4th Edition, p. 4311):
Subject to means conditional upon--Exemption from tax "subject to such restrictions and conditions as may be prescribed--means that the exemption is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed - KR.C.S. Balakrishna v. State of Madras - (1961) 12 STC 114 (S.C.).
- b. The meaning of the phrase can also be referred in Black Law's Dictionary -
Liabie, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. Homan vi Employees Reinsurance Corp., 345 Mo. 650, 136 S.W.2d 289, 302,
- c. The meaning of the phrase is also defined in P. Ramanatha Aiyar–The Law Lexicon (Second Edition, 1997) as
Under the control of someone or something subordinate to [S. 16, Sale of Goods Act); (S.40(1). Motor Transport Workers Act)

Thus, from above it can be inferred that the words "Subject to the provisions of Section 12' appearing in Section 8(2) shall be read in the sense that the provisions of Section 8(2) are conditional upon Section 12 only. Hence from above it can be concluded that Section 8(2) will apply only for those cases where Section 12 is applicable. The relevant extract of the definitions from the various books and case laws as mentioned above is attached as **Annexure-2**.

II. As mentioned in point 4(c) above, the place of supply for the services provided by the Applicant will be determined as per the provisions of sub-sections of Section (13)(3) of the IGST Act. Hence, for determining whether the services provided by the Applicant is "inter-state" or "intra-state", Section 8(2) will not apply.

III. Provisions of Section 7(5)(C) of the IGST Act, specifies that - supply of services in the taxable territory which is not an intra-state supply, and which is not covered elsewhere shall be treated as Inter-State supply. The said section is reproduced below:

(5) Supply of goods or services or both, -

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit;

or

(C) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter State trade or commerce.

Therefore, where the place of supply as per sub-sections of Section (13)(3) of the IGST Act for the services mentioned in Annexure-A, comes to a location in India i.e. services are provided in the taxable territory then the nature of supply of such services shall be determined as per the provisions of Section 7(5)(C) of the IGST Act.



Thus, it is submitted that as per Section 7(5)(c) of the IGST Act, the supply of services shall be treated as Inter-State supply and accordingly as per Section 5(1) of IGST Act, 2017, on supply of such services IGST shall be levied.

Submissions for Question 2

1. It can be inferred from above that IGST shall be discharged on supply of such services. Further, the details of the outward supply shall be provided in **Form GSTR-1** and payment of tax shall be made by filing Form GSTR-3B of the relevant month in which supplies are made.
2. The details of outward supply of services shall be filled in Table 7 GSTR-1. In case of **services** for which the place of supply comes to be in Maharashtra then the Maharashtra State shall be selected in 'place of supply' field in the Table 5 or Table
3. However, on selecting so the portal automatically freezes the supply type as- Intra State supply and therefore only CGST and SGST can be discharged on that supply.
4. Thus, even though the supply is an Inter-State supply however due to the system functionality IGST on such services cannot be discharged. The screen shot of the error is attached as **Annex-3**.
5. Therefore, it is submitted that in case the supply of services is liable to IGST and then how the same shall be discharged due to technical glitches on the GST Portal.

03. CONTENTION – AS PER THE CONCERNED OFFICER

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

In this regard it is to submit as under:

- The applicant M/s. Bilcare Ltd. is having various divisions, one of which is GCS (Global Clinical Material Supplies). The nature of services provided by this division are as under:
 - (a) Storage and Distribution Services such as receipt, storage, distribution, return and destruction of IPs (Investigational Products / Drugs) in India. These services includes logistic project management, receipt and reconciliation of drug product, to store drug product, storage of PK retains received from the site at the end of the study, pick and pack services for shipment to Ireland depot, freight charges for return shipment, return receipt and reconciliation per site, retention of project specific documents.
 - (b) The packaging services provided includes primary packaging such as blistering, bottling, liquid and ointment filling of tablets, liquids, ointments, creams, etc.. and secondary packaging such as labelling, kitting, block 'box preparation, cartoning, etc. of primary packed material and also storage distribution and destruction of primary and secondary packed material.

The applicant M/s. Bilcare Ltd, is having the place of business and is registered in State of Maharashtra under the GST Law. Thus, the location of the supplier is in India but the location of recipient of the services is outside India.

In order to classify service as export of service as per sub-clause (iii) of sub-section (6) of Section 2 of the integrated Goods and Services Tax Act, 2017, the place of supply of service should be outside India. Since the applicant, being supplier of service is located in India and. its recipient is located outside India, the provisions of Section 13 of the IGST Act, 2017 will be applicable in the subject case.



As per provisions of clause (a) of sub-section (3) of Section 13, the place of the supplier of the above services viz, *services supplied in respect of goods which are required to be made physically available by the recipient of services by the supplier of services* shall be the location where the services are actually performed.

Thus, in view of the provision of sub-clause (iii) of sub-section (6) of Section 2 read with clause (a) of sub-section (3) of Section 13 of the IGST Act, the place of supply shall be in the State of Maharashtra as in the present case the services are actually performed within the State by the supplier. Hence, the transaction seems to be eligible SGST & CGST as per the provisions stipulated therein in the CGST / SGST Act.

04. HEARING

Preliminary hearing in the matter was held on 27.02.2019. Sh. Karan Awtani, C.A., appeared and requested for admission of their application. Jurisdictional Officer Dr. Nilima Nagarkar, DC (PUN-VAT-E-624) Pune appeared in this matter.

The application was admitted and called for final hearing on 03.04.2019. Sh. Mehul Jivani, C.A., appeared, & made oral and written submissions. Jurisdictional Officer Dr. Nilima Nagarkar DC (PUN-VAT-E-624) Pune appeared and made written submissions. We heard both the parties.

05. OBSERVATIONS AND FINDINGS:-

We have gone through the facts of the case, written submission from both the parties and oral arguments made while hearing. The issue put before us is in respect of nature of supply as either interstate or intra state and the liability to pay tax under IGST Act or CGST+SGST respectively.

Applicant is a registered person under GST Act and is engaged in providing of various types of services to its foreign clients. The foreign clients can be Pharmaceutical Companies or a CROs (Clinical Research Organizations). The Nature of services provided includes (a) Storage and Distribution Services which includes receipt, storage, distribution, return and destruction of IPs (Investigational Products/Drugs) in India and (b) Packaging Services of Primary packaging which includes Blistering, Bottling; Liquid & Ointment Filling etc. of Tablets, Liquids, Ointments, Creams, Etc and Secondary packaging which includes Labelling, Kitting, Block Box Preparation, Cartoning, etc. of Primary packed material and also storage, distribution and destruction of primary and secondary packed material if required by the client.

Based on the above, applicant is seeking ruling in respect of two questions mentioned above. We shall now deal with each question separately-

Ques 1- . Determining whether the various services provided to foreign clients i.e. situated outside India and for which the place of supply is in the taxable territory shall be liable to Integrated Tax (herein referred to as "IGST") or Central Goods and Service Tax (herein referred to as "CGST") and State Goods and Service Tax (herein referred to as "SGST") for the purpose of levy of Goods and Services Tax (GST) under the GST Law.

The answer to the above question can be found in the Section 13 of the IGST Act,2013 which is reproduced below:

“ Section 13-----

13. (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) 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:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(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:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.”

In the present case we find that, though the location of the recipient is outside India, the services supplied are in respect of goods which are made physically available by the recipient of the services to the supplier of the services for the services to be performed. We can therefore say that the provisions of sub-section (3)(a) of Section 13 of IGST Act, 2017 mentioned above are squarely applicable for the supply in the instant case.

Since the ‘place of supply’ is in taxable territory it is clear that the provisions of Section 2(6) of the IGST Act are not fulfilled in this case and therefore their supply cannot be considered as Export of Services as per the GST Law.

Since the ‘place of supply’ and the ‘service provider’ are in the same State, CGST and SGST are payable for this transaction.

Question 2: In case it is ruled that IGST is payable, the procedure to be followed for payment of IGST as the GST portal does not permit the payment of IGST where the place of supply is indicated as state of Maharashtra.

The question is not answerable as IGST is not applicable.

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

ORDER

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

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

Question: - 1. Determining whether the various services provided to foreign clients i.e. situated outside India and for which the place of supply is in the taxable territory shall be liable to Integrated Tax (herein referred to as "IGST") or Central Goods and Service Tax (herein referred to as "CGST") and State Goods and Service Tax (herein referred to as "SGST") for the purpose of levy of Goods and Services Tax (GST) under the GST Law.

Answer: - As per above discussion, the services are liable to CGST and SGST as the location of 'supplier of service' and the 'place of supply' is in the same State, in terms of Section 13(3)(a) of IGST Act, 2017.

Question: - 2. In case it is ruled that IGST is payable, the procedure to be followed for payment of IGST as the GST portal does not permit the payment of IGST where the place of supply is indicated as state of Maharashtra.

Answer: - Not answered since IGST is not applicable.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)
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Copy to:-

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


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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