

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

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

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

**BEFORE THE BENCH OF**

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

**(2) Mr. T. R. Ramnani, Joint Commissioner of State Tax, (Member)**

|  |   |
|--|---|
| GSTIN Number, if any/ User-id  | 27AAGCP8432NIZU   |
| Legal Name of Applicant  | <b>M/s. Prettl Automotive India Private Limited</b>   |
| Registered Address/Address provided while obtaining user id<br>Corresponding Address | Shed No. 1 & 2, Gat No. 433, Near Weikfield, Lonikand Taluka Haveli, Pune -412216   |
| Details of application   | GST-ARA, Application No. 20 Dated 23.05.2019  |
| Concerned officer  | Division –V, Commissionerate Pune I.  |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought |   |
| A   Category   | <b>Service Provision</b>  |
| B   Description (in brief)   | Amount received by the applicant, whether to be considered as supply of goods or service  |
| Issue/s on which advance ruling required   | (i) classification of goods and/or services or both<br><br>(iv) admissibility of input tax credit of tax paid or deemed to have been paid<br><br>(v) determination of the liability to pay tax on any goods or services or both<br><br>(vii) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both. |
| Question(s) on which advance ruling is required                                      | As reproduced in para 01 of the Proceedings below.  |



**PROCEEDINGS**

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by **M/s. Prettl Automotive India Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

*1. Whether the financial assistance to be received by the Applicant is a consideration for supply and the activity is covered under the meaning of supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 / Maharashtra Goods and Services Tax Act, 2017?*

o/c

2. If the above activity is not considered as 'supply of services' then whether the said activity is to be considered as 'exempted supply' or 'non taxable supply and accordingly input tax credit is to be reversed in accordance with Section 17 of CGST Act, 2017 / MGST Act, 2017 read with Rule 42 of Central Goods and Services Tax Rules, 2017/ Maharashtra Goods and Services Tax Rules, 2017?

3. If the above activity is considered as supply of service, then whether the same is classifiable under SAC 9997 as other services nowhere else classified under Sr. no 35 of the Notification-11/2017- C.T. (Rate) dated 28th June 2017 / Sr. no 35 of the Notification-11/2017-S.T. (Rate) dated 29th June 2017 / sr. no 35 of the Notification 8/2017- I.T. (Rate) dated 28th June 2017?

4. Where the said activity if considered as supply of service, then whether the same is covered as "Zero Rated Supply and qualifies as "export of service under the provisions of Integrated Goods and Services Tax Act, 2017 and can be exported without payment of IGST?

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

## **2. FACTS AND CONTENTION – AS PER THE APPLICANT**

Submissions of M/s Prettl Automotive India Pvt. Ltd, Pune, the applicant, are as under:-

2.1 Applicant is engaged in supply of electric transformers, static converters, electric wires/ cables for transmission of electricity, equipment for spark ignition, installation and commissioning services,.

2.2 Prettl Kabelkonfektion GmbH, (Prettl GmbH), Germany, Applicant's holding company, desires to join the 'develoPPP.de programme' (said program) run by the German Federal Ministry for Economic Cooperation and Development. Prettl GmbH desires to provide financial assistance of 540,000 Euro to the Applicant under the said program.

2.3 **Salient features of the develoPPP.de programmeme' are furnished below.**

2.3.1 Under the said program, German Government has entered into development partnerships with the private sector, to promote services provided by the private sector towards economic, social and ecological sustainable development.

- 2.3.2 The said program promotes German companies investing in developing and emerging countries. Working with the said program, organizations can mitigate risks like, inadequate legal safeguards, cultural barriers, etc., by seeking ways to make their entrepreneurial actions more sustainable.
- 2.3.3 India is covered as a possible project country and the submitted projects have to meet the development-policy criteria of the German Government.
- 2.3.4 Under the said program, the German Government and participating company jointly bear the cost of project and provide financial assistance.
- 2.3.5 The German Government has appointed 2 official partners to implement the program on its behalf to plan and finance the project and implement it on the ground as below:
- DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH
  - Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
- 2.4 Prettl GmbH has proposed to enter into a Service Contract dated 01.03.2018 with the applicant to provide financial assistance and funding under the said program up to 31.03.2020 for carrying out of the following activities by the Applicant:
- a) Construction of a separate 400 sqm training center within a 2,500 sqm production hall, divided into a theory room and a practical training workshop;
  - b) Implementation of training measures for trainers, apprentices, unskilled workers and students or college graduates as well as integration of teaching content at four educational institutes;
  - c) One-year training of 80 vocational students (20 mechanics and 60 electrical engineers from the Industrial Training Institute Pune and Don Bosco)
  - d) Two-year training of 350 unskilled workers to become mechanics, electricians, mechatronics technicians;
  - e) Qualification of 25 college graduates as application and design engineers;
  - f) Qualification of four suppliers to obtain "PRETTTL certification";
  - g) All other activities not expressly listed here which are necessary for the successful completion of the develoPPP.de project'.
- 2.5 Applicant is under no obligation to offer any job to apprentices, unskilled workers and students who are getting training under the develoPPP.de project.
- 2.6 This outcome of the develoPPP.de project would contribute positively to the decision making of other foreign national / companies to invest more in India.
- 2.7 Impugned Service Contract is in draft stage and not yet signed by the parties. Applicant has initiated process to build relevant infrastructure but has not raised any invoice or received any amounts till date of application. While creating the infrastructure, any



goods procured, will be owned by the Applicant only and there will be no transfer of ownership.

2.8 Applicant submits that, financial assistance to be received under the said program is not covered as consideration for supply of goods or services and hence no GST is attracted.

2.8.1 Applicant has reproduced provisions of the GST Laws and submitted that, any payment will be treated as 'consideration' only if the same is made in response to the supply of goods and/or services.

3.4 In present case, Prettl GmbH, will provide financial assistance, to the Applicant, even though there is no supply of any goods and/or services to Prettl GmbH by the applicant. Such amount to be received is a mere transaction in money and is not against supply of any goods and/or services. Hence no tax is applicable on financial assistance received.

4. Applicant has cited certain provisions of the CGST Act like Section 2(47) and (78) which defines exempt supply and non-taxable supply respectively and has stated that, subject activity is neither covered as 'exempt supply' nor as a 'non-taxable supply'.

4.1 Applicant has also cited Section 17 of the CGST Act, and has made submissions in support of their contention that subject activity is not covered under 'blocked credits.

4.2 Since subject activity carried out by Applicant is not an exempt supply, ITC claimed if any, on procurement of inputs/capital goods or input services, to be used for the said program is not required to be reversed in terms of Section 17 of CGST Act, 2017 read with the manner specified in Rule 42 of CGST Rules.

5. Applicant states that no GST is payable on the amounts to be received from Prettl GmbH. However, without prejudice to this, if the said activity is considered to be covered as supply of service (as there is no supply of goods involved), then Applicant's understanding regarding classification and rate of GST is furnished below.

5.1 Scheme of classification of supply of services and rates of GST on such supply has been prescribed under Notification-11/2017- C. T. (Rate) dated 28.06.2017 and corresponding notifications issued under the MGST and IGST Acts.

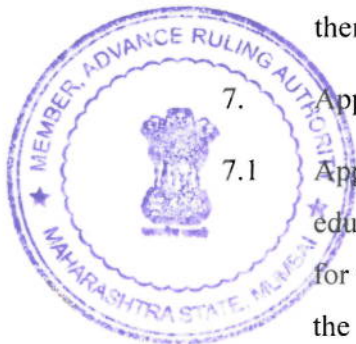
5.2 Since Applicant will be creating an infrastructure for implementation of training measures for production apprentices; unskilled workers & students or college graduates from engineering discipline, Entry Sr. 30 of above referred notification, prescribing for an SAC 9992 - Education Services @ GST 18% may be evaluated. However, Applicant is not running any educational institution & also not issuing any degree or diploma certificate to students & beneficiaries. Mere selection of educational related project under the said program does not describe the true nature of the activity.



- 5.3 Beneficiaries like apprentice, unskilled workers, etc. are neither related to nor represent Prettl GmbH. Therefore, such education & training activities of the Applicant are not supplied to Prettl GmbH. Applicant has reproduced the definition of the term "recipient" and stated that, the said definition includes the person who is liable to pay consideration for supply of goods or services or both, or person who pays consideration on behalf of the recipient of supply of goods or service.
- 5.4 In the present case Prettl GmbH is making payment in form of financial assistance & not paying on behalf of such beneficiaries. Hence, Pretti GmbH, the recipient of the service, is not getting any educational service from Applicant. Hence, services provided if any, by the Applicant are not covered under SAC/heading 9992.
- 5.5 Since there is no specific entry describing impugned activities, the said activities would be classifiable under residual Entry Sr. 35 of above referred notification which prescribes for an SAC 9997 – Other services nowhere else classified attracting GST @ 18%.
6. Applicant, has also made submissions in support of their contention that the impugned activity is covered as zero rated supply and thereby qualifies as "export of service" and therefore can be exported without payment of IGST.

7. Applicant has made additional submissions on 31.12.2019, which are as under:-

- 7.1 Applicant has entered into a Memorandum of Understanding / contracts with certain educational institutions for providing practical training / internship to students enrolled for vocational educational courses at the said institutions, courses which are designed by the Government and above educational institutions on the basis of guidelines, syllabus and curriculum designed by Government of India. Further, examination is conducted directly by the relevant institution and the degree or diploma certificate is also awarded by the respective institutions or the university. The portion of practical training by way of, on- job training is proposed to be completed in the factory premises of the Applicant and the applicant would contribute or bear costs (to be reimbursed by Prettl GmbH), relating to labs within the institutions, transportation, hostel and mess charges, uniform and stationery costs, staff salary, training of trainers and related incidental costs and also provide support in design course curriculum and syllabus. Students apply on their own with the educational institutions and pay fees of the respective educational institutions. Applicant has no role and responsibility in selection, admission process and over all conduct of the Course.



- 7.2 Students who are selected for practical training to be conducted in the factory premises of the applicant are taught: to ascertain and select measuring instrument, measure dimension of components and evaluate for accuracy; mark out components for assembling, filing, drilling, riveting, fitting and allied operations ; work on lathe, drilling and other related machine and operate these machine to produce simple components; use appropriate tools and equipment to make gauges, slide fittings and simple jig and fixtures for drilling and also check for accuracy; assemble, re-assemble, dismantle and repair damaged components and check the same for appropriate functioning; Working of welding, soldering, brazing operations using appropriate materials and tools and to perform basic day to day repair and maintenance along with erection of general machine tools like lathe.
- 7.3 Since the transaction between applicant and the Educational Institutions / Students is not covered as “supply of services”, the impugned activity cannot be classified under SAC 999293 as '*commercial training and coaching services*'.
- 7.4 If the financial assistance received from the Prettl GmbH is treated as consideration for service supplied by the Applicant, then the recipient of service would be the Prettl GmbH only and not the educational institutions or students in India.
- 7.5 Applicant is not providing bundled service as stated by the jurisdictional officer. Applicant has created training area admeasuring about 1000 sq. feet within the existing factory production premises by way of temporary partition of aluminum and glass structure having very minimal value of INR 96,000/-.
- 7.6 The intention behind receipt of financial assistant by applicant is to discharge corporate social responsibility and not to receive any construction or education service from the Prettl GmbH.
- 7.7 The recipient of service i.e Prettl GmbH does not have a fixed establishment in India. Hence, place of supply is outside India in terms of Section 13(2) of the IGST Act, 2017.

**03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER**

- 3.1 The jurisdictional officer made submissions on the subject issue vide letter dated 01.12.2019.
- 3.2 Fresh Response in the subject Application was filed by the jurisdictional officer on 25.11.2020 wherein it is mentioned that the earlier submissions dated 01.12.2019 may not be considered the fresh response is as under:-

- 3.2.1 Issues raised in the subject Application revolve around the transaction between Prettl, Germany and Prettl India, for implementation of the Project of human resource development and skill enhancement in India envisaged under the develop.de program of the Federal Ministry of Economic Cooperation and Development, entrusted to the DEG.
- 3.2.2 This is a Government- Private partnership PPP model, where the Government bears a part of the expenses and the Private Company implements the objectives of the Government, by contributing with money as well as the required paraphernalia, to set up a training centre and impart training to students / targeted employees for enhancing their skills and turning them into a quality workforce. This involvement of the private Company, in this case Prettl Germany, is akin to fulfilment of Corporate Social Responsibility - CSR (Preamble of Contract 1 refers).
- 3.2.3 If the project is in the nature of CSR, then the activity of providing training to the targeted group of individuals is a non-business activity and done in pursuance of fulfilment of CSR obligation. Hence, the project is not taxable under VAT of Germany as it is not a commercial /business venture - even the DEG has termed it as non- taxable with respect to the portion of expenses which would be reimbursed by DEG –(Para 4 of Article 4 of Contract 1 refers). In order to provide the requisite training, a complete infrastructure is required, which includes the training place, the tools, equipments, and machinery and manpower to provide the training (including Trainer's training). These may be supplied by various vendors, including Prettl Germany, for the project. *These vendors are liable to pay the taxes, as applicable, on supplies made by them to the project.*
- 3.2.4 The entire project is mandatorily to be treated as a Separate Cost Centre – and all expenses and income, if any, have to be accounted separately. - (Article 2 of Contract 1 refers). The project is, therefore, a completely different vertical, having its own independent existence.
- 3.2.5 A detailed cost sheet has been provided in Contract 1, wherein every activity is fragmented with respect to its cost and the cost of the entire project has been estimated at 610,000/- Euros, of which the contribution from DEG is 190,000/ Euros. Any increase in the estimated cost shall be borne by Prettl Germany on their own account. Any decrease in the estimated cost will entail reduced contribution of DEG and Prettl Germany. - (Article 2 of Contract 1 refers).
- 3.2.6 Upon completion of the calculated Milestones / Project, as decided in Contract 1, Prettl Germany are required to submit various accounts, along with certification of tasks

completed, which will be put to audit by DEG and this audit shall have a bearing on the monies paid / to be paid to Prettl Germany as part of DEG contribution.

3.2.7 Entire activity which was required to be done by Prettl (Germany) in pursuance of Contract 1 is now being done by Prettl India, in India. In other words, Prettl India has stepped into the shoes of Prettl Germany, as far as the project is concerned, with Pune in India being the target location for the proposed project. Those same activities are to be performed by Prettl India as were to be performed by Prettl Germany - (\$1 (Preamble) and \$2 (Services of the Service provider) of Contract 2 refers].

3.2.8 Therefore, Prettl India is required to have the similar infrastructure including the training place, tools, equipments, and machinery and the manpower to provide the training. Prettl India would naturally incur expenses towards the same. Prettl India will bear the GST payable on the receipt of these supplies (goods and services) from various vendors. It is pertinent to mention, that if Prettl India supplies goods or service for the Project, the cost of the same will be included in the cost of the Project- (para (b) of \$3 of Contract 2 refers).

3.2.9 The Project will be a separate cost centre for implementation of the developPPP. de project – i.e. an extension of Contract 1. (Para (a) of \$3 of Contract 2 refers). The Project, therefore, will have a separate and distinct identity, say Prettl Automotive-Training Unit. All these expenses will therefore be accounted in the entity Prettl Automotive Training Unit in India and for these expenses, Prettl Germany, will reimburse Prettl India- A/c Prettl Automotive -Training Unit to the extent of 540, 000/- Euros to be paid in 3 instalments. – (\$4- Remuneration of Contract 2 refers).

3.2.10 Since Prettl Germany is mandated to provide details of actual costs along with the necessary certifications as per Contract 1, it is only natural that all these expenses and certificates will have to be provided to Prettl Germany by Prettl India, although Contract 2 does not specifically mention the same. Therefore, though Prettl India is not a party to Contract 1, the obligations of Prettl India remain the same, as Contract 2 is an extension of Contract 1, with Prettl India entering into the shoes of Prettl Germany for implementing the Project.

3.2.11 The Project is a Public-Private Partnership, which is not a commercial or business venture. The money received by Prettl Germany from DEG towards execution of the Project is for establishing and implementing a non-commercial project. The Project in India, being the same as devised and contracted by DEG and Prettl Germany, will also hold the same position. Hence, the entire project in India will acquire the same colour and is therefore a non-commercial / non-business venture.



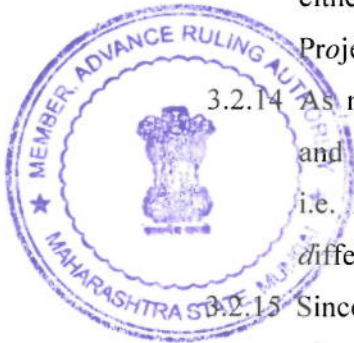


3.2.12 Defining the "Scope of Supply", Section 7(a) of the CGST Act, 2017 includes all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the *course or furtherance of business*. The money received / to be received by Applicant from Prettl Germany for implementation of the Project cannot be regarded as "consideration received in the course or furtherance of business" – as the Project is non-commercial / non-business, and consequently, there is no "supply" of services, even though the Contract 1 and Contract 2 are called as Service Contracts. Since there is no "supply", there cannot be any levy of CGST/SGST under Section 9 *ibid*. The money received / receivable by the applicant is not towards rendering of any service to Prettl Germany, but an infusion of funds into Prettl India by Prettl Germany for implementing the Project. Prettl India being a subsidiary of Prettl Germany and Prettl Germany being the Holding Company further enforces this view. The money received from Prettl Germany is, therefore, not taxable, as there is no outward supply on the part of Prettl India.

3.2.13 This view is further augmented by the fact that neither Prettl Germany nor Prettl India have any say in the selection of the students for the purpose of training, which is left to the individual Educational Institutes to decide, nor are the students the employees of either Prettl Germany or Prettl India. (Work Package II and Work Package III under Project Description annexed as Annexure 1b/60056 of Contract 1 refers).

3.2.14 As mentioned hereinabove, since the Project is a separate cost centre, it is *different* and distinct from Prettl India, which is a registered GST assessee. This cost centre i.e. Prettl Automotive -Training Unit will be a distinct vertical of Prettl India and *different* from the GST registered Prettl India.

3.2.15 Since the Project i.e. setting up of training centre and imparting training, is not a business or commercial activity, the CGST/SGST or IGST paid on the goods or services required to bring the Project into existence will not be available as ITC to Prettl India for discharging the GST liability on their own products cleared under their GST registered identity. The Project being a non-business venture, as discussed above, Section 17(1) *ibid* imposes a bar on availing the credit on supplies used for purposes other than business. In fact, if the GST registered identity of Prettl India themselves supply any goods or service for the Project (Prettl Automotive -Training Unit) and the cost of such supplies is factored in the cost of implementing the Project, the GST registered Prettl India will pay the GST on such supplies, as such supplies will be tantamount to supply between two different verticals of the same person. (Article 2 - para 5 of Contract 1 and §3 of Contract 2 refers). The GST/ IGST paid on the supplies of



goods / services required to implement the Project shall become a cost at the hands of Prettl India (Prettl Automotive –Training Unit) and the same would be factored in the cost of project implementation, for which they are receiving 540,000/- Euros.

3.2.15 The Project (Prettl Automotive -Training Unit) being a non-business enterprise, with no outward supply, will not be required to obtain registration under the GST laws. It will be an unregistered entity for all purposes of the GST laws.

3.3. In view of the factual and legal position emerging out of the above discussion, the considered stand of the Department on the point wise issues raised in the Advance Ruling Application No. 20 dated 23.5.2019 is as under:

| Point No. as per Application | Question on which ruling is required  | Department's stand  |
|------------------------------|---|---|
| 14.1                         | Whether the financial assistance to be received by the Applicant are covered as 'consideration for supply and the activity is covered under the meaning of 'supply of services ' in terms of Sec. 7 of the CGST Act, 2017 MGST 2017.  | The financial assistance is infusion of money by Holding Company into subsidiary Company for implementation of a Project under PPP to fulfil social responsibility. As mentioned in foregoing paras, there is no supply of service involved and hence the financial assistance cannot be treated as 'consideration for supply'.   |
| 14.2                         | If the above activity is not considered as 'supply of service' then whether the said activity is to be considered as 'exempted supply' or "non-taxable supply" and accordingly input tax credit is to be reversed in accordance with Sec 17 of CGST Act, 2017 / MGST Act, 2017 read with Rule 42 of CGST Rules 2017 / MGST Rules, 2017? | The entire activity of setting up of a training centre and imparting training therein is to be considered as a separate cost unit. This activity is not a "supply". All supplies, goods and services, received for the cost unit will be accounted for in the cost unit. The cost unit will be an unregistered entity. Any GST / IGST supplies received by this cost unit, will be for its own consumption and use. Being an unregistered unit, ITC of GST paid on supplies received will not be eligible to it. And the GST registered Prettl Automotive India Pvt Ltd. will definitely not to be eligible for the same. |
| 14.3                         | If the above activity is considered as supply of service, then whether the  | Not applicable. There being no 'supply', question of classification does not arise.   |



|      |   |   |
|------|---|---|
|      | same is classifiable under SAC.....   |   |
| 14.4 | Where the said activity is considered a supply of service, then whether the same is covered as “ Zero Rated “Supply” and qualifies as export of service’. | Since there is no 'supply', question of 'Zero Rated supply' or 'export of services' does not arise. |

#### **04. HEARING**

4.1 Preliminary hearing in the matter was held on 14.11.2019. Shri Deepak Naik, Authorised Representative (AR), appeared along with Shri Pushkar Naik, AR and requested for admission of their application. Jurisdictional Officer Shri Vikas Kumar Nigam, Superintendent, Range-III, Division – V, GST, Pune –I, also appeared and made written submissions.

4.2 The application was admitted and called for final hearing on 26.11.2019. Shri Deepak Naik, AR, appeared. During the hearing it was found that there are no documents to substantiate the nature of activities carried out by the applicant. The Authorized Representative requested for another date to submit the documents which was accepted. Jurisdictional Officer Shri Vikas Kumar Nigam, Supptt, Range-III, Division-V, from office of Asstt. Commissioner of CGST, Pune-I, appeared and made written submissions.

4.3 Applicant submitted relevant documents and was called on 28.01.2020 for hearing. Shri Deepak Naik, AR, appeared. We heard both the sides.

4.4 Online hearing was conducted on 10.11.2020. Applicant’s authorized representative and jurisdictional officer, both attended the hearing. Applicant submitted agreement copy between Prettl GMBH and the German Government and has submitted that, they are not supplying ‘Commercial Coaching & Training Services’. The jurisdictional officer requested for time to make submissions in light of the agreement copy submitted by the applicant.

#### **05. OBSERVATIONS**

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

5.2 Subject application has been filed in respect of activities run by the German Federal Ministry for Economic Cooperation and Development, connected to the 'develoPPP.de programmeme" (said program), details of which are mentioned in the subject application.



5.3 Under the said program, the German Government and participating company jointly bear the cost of project and provide financial assistance. Prettl Kabelkonfektion GmbH, (Prettl GmbH), Applicant's holding company, incorporated in Germany desires to provide financial assistance to the Applicant under the said program and therefore, proposed to enter into a Service Contract requiring the applicant to; construct a 400 sq.m. training center within a 2,500 sq.m. production hall, divided into a theory room and a practical training workshop; implement training measures for trainers, apprentices, unskilled workers, students or college graduates as well as integration of teaching content at four educational institutes; train 80 vocational students from the Industrial Training Institute, Pune and Don Bosco; training of 350 unskilled workers to become mechanics, electricians, mechatronics technicians; for Qualification of 25 college graduates as application and design engineers; and for Qualification of 4 suppliers to obtain "PRETTL certification"; and all other activities which are necessary for the successful completion of the develoPPP.de project'.

5.4 In view of the submissions made, we take up the first question for discussion i.e. whether the financial assistance to be received by the Applicant is a "consideration for supply and whether their activity is covered under the meaning of supply of services in terms of Section 7 of the GST Act.

5.4.1 From the submissions made, we observe that there is an intention to promote investments of German companies in India for which training of various skilled and unskilled categories will be done by the applicant in India and the consideration towards supply of such service, in the guise of financial assistance, will be received by the applicant and the entire transaction is to be taken up under a service contract. The very fact that the applicant has mentioned that a service contract has been proposed implies that there is an expectation that some kind of service will be provided by the applicant to its holding company, which is a separate legal entity. However, it is contended by the applicant that, since there are no services rendered in the subject case, the financial assistance to be received by them is not covered as consideration for supply of goods or services and therefore no GST is payable. While the agreement entered into is a service agreement, the contention of the applicant is that they are not rendering any service, which appears to be a contradiction in itself.

5.4.2 We agree with the applicant that, the charging event under GST law is supply of goods or services for consideration. Any payment will be treated as 'consideration' only if it is made against supply of goods and services. We will therefore discuss, whether the

activities undertaken by applicant, in terms of the service contract, constitutes a supply' or not.

5.4.3 This argument of the applicant that, the financial assistance to be received, is a mere transaction in money and not against supply of goods or services, is not acceptable. The 'develoPPP.de project' intends to promote investments of German companies in India. Accordingly, Prettl GmbH has asked the applicant to undertake some activities for which financial assistance is provided. Applicant contends that, there is no supply flowing from them to Prettl GmbH. We do not agree with this view. The activities undertaken by the applicant are in pursuance of a service agreement with Prettl GmbH and the amount received/to be received is also in pursuance of the same agreement. Further, activities undertaken by the applicant are to promote the investments of German companies in India and are undertaken only on the directions of Prettl GmbH.

5.4.4 The definition of supply as per Section 7 of the CGST Act is reproduced below :-

*Section 7- Scope of supply*

*(1) For the purposes of this Act, the expression "supply" includes*

*(a) 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 and furtherance of business,*

*(b) .....*

*(c) .....*

*(d) the activities to be treated as supply of goods or supply of services as referred to, in Schedule II.*

*(2) .....*

*(3) .....*



5.4.5 We refer to Schedule II and as per Sr. No. 5 (e) mentioned therein, “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, **or to do an act**” **amounts to supply of services.**

5.4.6 We now take up the clauses of the agreement submitted by the applicant as under:-

1. The agreement is between the applicant and Prettl GmbH.
2. The Preamble states that, with the develoPPP.de programmeme, the German Government has entered into development partnerships, through its partner, namely, Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG), with the private sector in order to promote services provided by the private sector. The Preamble further mentions that since the automotive business and in particular the cable business is

extremely competitive, very low prices must be offered and since wage costs play a decisive role in this, the Service recipient i.e. Prettl GmbH intends to build up a workbench in India in the long term to produce Prettl Kablekonfektion products and benefit from lower Value-add costs. Therefore Prettl GmbH is planning to qualify local employees and suppliers for this purpose. The Preamble further states that as there is a shortage of specialists in India in the field of dual training in mechanics, electrical engineers and design engineers, Prettl GmbH is willing to provide training to such specialists through the Service Provider, (in this case, the applicant), at its own expenses.

3 Under the clause “Services of the Service Provider”, in the said agreement, Prettl GmbH has entrusted to the applicant, a gamut of services, which have been mentioned in para 5.3 above. Under this clause it is also mentioned that the exact content of the services provided by the applicant is listed in the contract dated 23.02.2018 between DEG and Prettl GmbH.

5.4.7 In the entire agreement it is seen that, the said agreement is for provision of services. Prettl GmbH is treated as a Service Recipient and the applicant is treated as a service provider. We also find, from the agreement that, applicant has agreed to provide certain services for which they will be paid some amounts. The applicant is terming these amounts as financial assistance whereas it is very clear from the agreement that the said amounts must be treated as consideration since they are being given to the applicant in lieu of certain supply of services to be effected by the applicant on the directions of Prettl GmbH, i.e. the holding company. We also reiterate that in the impugned draft agreement, the applicant is considered as a ‘service provider’.

5.4.8 We further observe from the applicant’s submissions that, Prettl GmbH intends to build up a workbench in India, to produce their products and benefit from lower Value-add costs, since the automotive business and cable business are extremely competitive. Hence the activity undertaken by the applicant in India, under a contract with Prettl GmbH is towards such buildup of workbench to produce their products, if required.

5.4.9 Hence, as per the agreement, applicant has consented/agreed to do some acts and as per clause 5 of Schedule II appended to GST Act, ‘an agreement to do an act’ will be considered as supply of services. Hence in the subject case, we hold that the applicant is rendering supply of services for which it is receiving consideration in the form of “financial assistance”.

5.4.10 In view of the above discussions, we do not agree with the jurisdictional office that, there is no supply in the subject case.



5.5 Further, in view of the above, we are not taking up the second question raised by the applicant for discussion, since we hold that the subject activity is to be treated as supply of services and financial assistance received, is a consideration for such supply.

5.6 The third question raised by the applicant is *“If the above activity is considered as supply of service, then whether the same is classifiable under SAC 9997 as other services nowhere else classified under Sr. no 35 of the Notification-11/2017- C.T. (Rate) dated 28th June 2017 / Sr. no 35 of the Notification-11/2017-S.T. (Rate) dated 29th June 2017 / sr. no 35 of the Notification 8/2017- I.T. (Rate) dated 28th June 2017 with respect to classification of such services.*

5.6.1 The applicant has submitted that the services rendered by them may be treated as classifiable under SAC Heading 9997 (other services nowhere else classified). On the other hand, the jurisdictional officer vide letter dated 25.11.2020 has contended that, there is absence of “supply” in the subject case. In their submissions, the applicant has also stated that Entry Sr. 30 of Notification-11/2017- C. T. (Rate) dated 28.06.2017, prescribing for an SAC/ heading 9992 - Education Services @ GST 18% may be evaluated for their activity.

5.6.2 The term ‘Education’ has not been defined under the GST Laws. However, the Hon’ble Supreme Court while deciding the matter in the case of “Loka Shikshana Trust vs. CTT” defines ‘**Education**’ as a process of training and developing knowledge, skill and character of students by normal schooling.

5.6.3 In the subject case it cannot be said that the applicant is involved in education per se since the element of normal schooling is absent. Further, the Applicant has also agreed that it is not imparting any classroom training, knowledge & lessons & thereby not running any educational institution & also not issuing any degree or diploma certificate to students & beneficiaries. In fact, the applicant has submitted that they are not providing any Education services to anyone.

5.6.4 We find that, the applicant is required to supply a gamut of services under the terms of the subject contract. The subject services are agreed to be undertaken by the applicant under the terms of the contract with Prettl GMBH. Thus, it is seen that the activities undertaken by the applicant, in India is as per the requirements of Prettl GMBH. Applicant has submitted that it is not supplying any goods and services to the Prettl GmbH or the German Government and the beneficiaries like students, unskilled workers and apprentice are not representing the Prettl GmbH or not getting any training facility as an employee or on behalf of the Prettl GmbH. However we observe that the entire activities undertaken by the applicant are only as per the impugned contract, implying

that, in the absence of such contract, the applicant would not undertake the said activities. Hence it is clear that, the applicant is obliged to perform the subject activity, i.e. to do an act, under the terms of the impugned agreement. We do not agree with the submissions made by the applicant with respect to classification of services rendered by applicant.

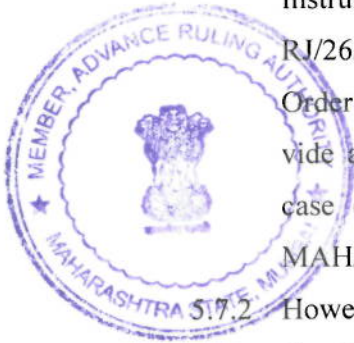
5.6.5 In view of the above, we find that the applicant has agreed to do acts under the impugned contract and therefore their supply is to be classified under SAC Heading 999792 which pertains to "Agreeing to do an Act".

5.7 The fourth question raised by the applicant is whether the said activity, if considered as supply of service, is covered as "Zero Rated Supply and qualifies as "export of service under the provisions of IGST Act, 2017 and can be exported without payment of IGST.

5.7.1 To decide this question, "place of supply" is required to be discussed. This authority in earlier instances has not been inclined to discuss issues pertaining to "place of supply", relying on the decisions made by the Appellate Authority of Advance Ruling (AAAR), Maharashtra State in the case of M/s. NES Global Specialist Engineering Services Pvt. Ltd. vide its Order No. MAH/ AAAR/55-R/03/2019-20 dated 02.08.2019, M/s Micro Instrument (Mrs.Vishakha Prashant Bhawe), vide appeal order no. MAH/AAAR/SS-RJ/26/2018-19 dated 22.03.2019, M/s Sabre Travel Network India Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/30/2018-19 dated 10.04.2019, M/s Asahi Kasei Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/01/2019-20 dated 19.06.2019, and in the case of M/s Segoma Imaging Technologies India Pvt Ltd, vide appeal order no. MAH/AAAR/SS-RJ/28/2018-19 dated 03.04.2019.

5.7.2 However, in the case of Sutherland Mortgage Services INC Vs Principal Commissioner, the Hon'ble Kerala High Court has observed that even though the issue relating to determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 97(2) of the CGST Act, the said issue relating to determination of place of supply, would come within the ambit of the larger issue of 'determination of liability to pay tax on any goods or services or both' as envisaged in clause (e) of Section 97(2) of the CGST Act.

5.7.3 The said decision in the case of Sutherland Mortgage Services INC has been cited and referred to by the Appellate Authority for Advance Ruling, Maharashtra in the case of appeal filed by M/s Portescap India Private Limited against the order passed by the Advance Ruling Authority, Maharashtra vide Ruling No. GST-ARA-93/2019-20/B-31 dated 12.03.2020. The said Appellate Authority observed as under:





*“Thus, it is evident from the aforesaid High Court Judgement that the clause (e) of Section 97 (2) of the CGST Act, 2017 has got a very wide connotation and would cover all sorts of transactions, where the Advance Ruling on the questions related to the determination of the liability to pay tax including the liability under RCM (Reverse Charge Mechanism) can be sought by the Applicant in terms of the provisions related to the Advance Ruling as provided under Chapter XVII of the CGST Act, 2017.”*

5.7.4 It is seen from 5.82 and 5.8.3 above that both, the Hon’ble Kerala High Court and the Hon’ble Maharashtra Appellate Authority for Advance Ruling, are of the view that the clause (e) of Section 97 (2) of the CGST Act, 2017 has got a very wide connotation and would cover all sorts of transactions, where the Advance Ruling on the questions related to the determination of the liability to pay tax can be sought by the Applicant.

5.7.5 Hence, in view of the decision of the Hon’ble Kerala High Court and the Hon’ble Maharashtra Appellate Authority for Advance Ruling we now discuss the “place of supply” as under:

5.7.6 The term export of service has been defined under Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) as under:-

*"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 [or in Indian rupees wherever permitted by the Reserve Bank of India]; 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;"*

5.7.7 The subject transaction satisfies the conditions mentioned in clauses (i), (ii), (iv) and (v) of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act). However to be considered as Export of Services as per the GST Laws clause number (iii) with respect to Place of Supply of Services should be outside India. Whether the subject transaction is taxable or otherwise can be decided only by discussing the place of supply. Hence we take up the issue of place of supply in the subject case.

5.7.8 As mentioned above, the impugned Service Contract requires the applicant to; construct a training center; implement training measures for trainers, apprentices, unskilled workers, students or college graduates as well as integration of teaching content at four educational institutes; train vocational students from the Industrial



Training Institute Pune and Don Bosco; train unskilled workers to become mechanics, electricians, technicians; etc.

5.7.9 As per Section 13 (5) of the IGST Act, the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

5.7.10 It is found from the submissions and as mentioned above that, the entire gamut of supply as per the agreement between the applicant and Prettl GMBH, will be performed in India and therefore we have no hesitation in holding that the place of supply, being event based in the subject case, is in India. The subject transaction does not satisfy the condition mentioned in clauses (iii) of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) and therefore the said transaction cannot be considered as Export of Services under the GST Laws.

06. In view of the above discussions, we pass an order as follows:

### ORDER

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

NO.GST-ARA- 20/2019-20/B- 59

Mumbai, dt. 15.12.2020

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

**Q.1:-** Whether the financial assistance to be received by the Applicant are covered as “consideration for supply and the activity is covered under the meaning of supply of services in terms of Section 7 of the CGST Act, 2017 / MGST Tax Act, 2017?

**Answer :-** Answered in the affirmative.

**Q.2:-** If the above activity is not considered as 'supply of services' then whether the said activity is to be considered as 'exempted supply' or 'non-taxable supply?' and accordingly input tax credit is to be reversed in accordance with section 17 of CGST Act, 2017 / MGST Act, 2017 read with Rule 42 of Central Goods and Services Tax Rules, 2017/ Maharashtra Goods and Services Tax Rules, 2017?

**Answer :** - Not answered in view of answer to question no. 1 above.

**Q.3:-** If the above activity is considered as supply of services, then whether the same is classifiable under SAC 9997 as other services nowhere else classified" under Sr. no 35 of the Notification-11/2017- Central Tax (Rate) dated 28th June 2017 / Sr. No 35 of the Notification-11/2017-State Tax (Rate) dated 29th June 2017 / Sr. No 35 of the Notification 8/2017- Integrated Tax (Rate) dated 28th June 2017?

**Answer :-** In view of the discussions made above, the supply of service in the subject case , is classifiable under SAC 999792 under Notification-11/2017- Central Tax (Rate) dated 28.06.2017.

**Q.4:-** Where the said activity if considered as supply of service, then whether the same is covered as "Zero Rated Supply and qualifies as "export of service under the provisions of Integrated Goods and Services Tax Act, 2017 and can be exported without payment of IGST?

**Answer :-** Answered in the negative.



*Ramnani*  
15-12-2020  
**T. R. RAMNANI**  
(MEMBER)

*Vinitha*  
15/12/2020  
**P. VINITHA SEKHAR**  
(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. Joint Commissioner of State Tax, Mahavikas for Website.

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