

**AUTHORITY FOR ADVANCE RULING, TAMILNADU  
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,  
5<sup>TH</sup> FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,  
CHENNAI – 600 003.  
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE  
GOODS AND SERVICES TAX ACT, 2017.**

**Members present are:**

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,  
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34

2. Tmt K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/Member,  
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

**ORDER No. 18/AAR/2022 DATE: 29.04.2022**

GSTIN Number, if any / User id	Unregistered – User Id 332100000421ARI
Legal Name of Applicant	Translog Direct Private Limited.
RegisteredAddress/Address provided while obtaining user id	C 301, Harshvardhan CHSL, Saki Vihar Road, Andheri East, Mumbai Bandra Suburban, Mumbai 400 072.
Correspondence address, if different from above	13/6, Judge Jumbulingam Street, Mylapore, Chennai- 600004
Details of Application	GST ARA- 01 Application Sl.No.28/2021/ARA dated:23.08.2021
Concerned Officer	Centre: Chennai North Commissionerate State: Triplicane Assessment circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A	Category
B	Description (in Brief)
	Provision of Service
	Translog Direct Private Limited (Applicant), a newly incorporated company in India, has been set-up with the aim of providing support services to overseas shipping lines/charterers. The support services are in relation to the operations of vessels of different shipping lines which are entering/exiting India. Therefore, the

	company would like to offer its overseas customers a consolidated end to end solution by offering such services on its own account.
Issue/s on which advance ruling required	Classification of goods and/or services or both
Question(s) on which advance ruling is required	<p>1. The Applicant would like to seek a ruling on whether the provision of specified services would qualify as "support services" under SAC 9985 of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017.</p> <p>2. The Applicant would also like to seek a ruling on whether such support services would be considered as export of services based on the present facts and circumstances.</p>

**Note:** Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Translog Direct Pvt. Ltd., with the address for communication as 13/6, Judge Jumbulingam Street, Mylapore, Chennai- 600004 (hereinafter called the Applicant) are Un-registered under GST. The applicant has sought Advance Ruling on the following questions:

1. The Applicant would like to seek a ruling on whether the provision of specified services would qualify as "support services" under SAC 9985 of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017.

2. The Applicant would also like to seek a ruling on whether such support services would be considered as export of services based on the present facts and circumstances.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has referred to Section 95(a), 95(c) and 97(2) of Central Goods & Service Tax Act, 2017 and has stated that they would like to seek clarification on the questions mentioned above on the ground that they have jurisdiction to file the advance ruling since they have registered themselves as a 'company' under the Companies Act, 2013 to provide services to their customers overseas and raise questions on the classification of such proposed services.

2.2 They have further stated that they are a newly incorporated Company incorporated under the Companies Act, 2013 and they have their registered corporate office located at C 301 Harshvardhan CHSL, Saki Vihar Road, Andheri East, Mumbai Suburban 400072. They are not currently registered under GST as they do not meet the threshold requirements for registration as per Section 24 of CGST Act, 2017 as the Company is in the process of commencement of its operations. They have been incorporated with the aim to streamline and provide services in the marine industry by providing end to end support services to overseas shipping lines/charterers such as crew related activities, documentation support services, administrative functions and other customary activities when entering/exiting the Indian ports to its foreign clients. They will be offering support services to their customers located outside India on a principal-to-principal basis. The customers are in the business of chartering vessels for transportation of goods into India and moving goods outside India and for the provision of aforesaid services, they will render services to vessels/ ship-owners to ensure smooth operations while the vessel/ship is in India. Their main intention is to provide end-to-end solution to their overseas customers in the form of assisting/supporting while the vessel(s) arrive in India. As a result, they intend to supply 'support services' in line with the classification under SAC Code 9985 so that the shipping lines/charterers are not worried about the paperwork or other routine & customary formalities involved for its shipments coming into India for further transport.

2.3 They have stated they are concerned with this leg of the transaction only i.e. concerned with vessel operations when entering/exiting India. It does not deal with further transportation to the end customers, or the proposed services are not in any way related to liaising with the end customers. There is no relationship of the Applicant with the end customers of the charterers/shipping lines. The nature of support services to such charterers will be to provide services in an aligned, efficient and coordinated manner so that the overseas charterers can utilize port, documentation and related services easily as well as take care of their day-to-day vessel functions.

2.4 They have listed the primary functions which would be performed by them in India ("**Specified Services**") as under:

- a. Handling all registration, approval, advance payments and formalities regarding the arrival and departure of the vessel towards port and Government authorities.
- b. Co-ordinate all activities of port, as set forth in the Agreement, in order to ensure the proper performance of all customary requirements for the operation of the service recipient's vessels in the Territory; and
- c. Co-ordinate with stevedores and other relevant parties, reporting to appropriate authorities and arranging and checking documentation;
- d. Up-to-date reporting to the Service Recipient, the vessel's position and preparing a statement of facts of the call and/or a port log providing full overview of the current status of operations. Further, providing statistics and historical information as may be reasonably requested by the service recipient;
- e. Attend the Master and all crew matters, consular requirements, organizing medical and dental treatment and supervising crew changes;
- f. Applicant will provide documentation support service by issuing such documents as may be needed for customary requirements for in inward/outward movement of the Service Recipient's vessels.
- g. Order and receive goods, services and supplies for the vessel;
- h. Make arrangements for receiving bunkers (fuel)
- i. Arrange and coordinate repairs including spares and professional services; and
- j. Perform all other activities to support the day to day running of the vessel while in Port including overseeing or supervising the functions of third parties engaged by the Applicant.

k. Service recipient's requirements concerning claims handling. All expenses involved with claims handling are for the Service Recipient's account.

The Applicant has further stated that they will not be providing any port service to the charterers/shipping lines. Thus, the contract for aforesaid services will be between the Applicant (as the service provider) and the charterers/shipping lines (as service recipients) and it is the responsibility of the Applicant to provide the services specified above. Further, it will also not play any role in arranging, marketing or finalizing the supply of goods/ services between the Indian customers with the overseas charterers.

2.5 On their interpretation of law, the Applicant has made the following submissions, each of which is requested to be taken in the alternative and without prejudice to each other:

I. **The proposed 'support services' rendered by them cannot be classified as an intermediary service**

- As far as 'support services' are considered, there is no explicit definition given under the GST legislation. Therefore, they have referred to the corresponding definitions under the Finance Act 1994 (erstwhile service tax regime) under Section 65(104C) and Section 65B(49) and stated that accordingly, in consonance with the present factual matrix and the services specified therein, the services to be rendered are in the nature of supporting the commerce and business of the overseas charterers/shipping lines while the ship/vessel is in India.
- The services proposed to be rendered assist in the administration and manage the logistics/operations of the ships/vessels while entering/leaving the ports of India. Further, they will only help in supporting and assisting in the logistical operations of the ships/vessels when the shipment or the goods transported move into or outside India. Therefore, the scope of services is confined only with respect to the territory of India and with respect to vessel and crew related functions (day to day or otherwise).
- It will not be a continuous set of services that are provided at all times to the customers of the Applicant for their travel and transportation to different locations and ports across the world such that the services become integral to the business of the charterers/shipping lines. The support is necessary only during travel into and exiting the ports of India. Therefore, the scope of services is limited and within the boundaries of

India only. Such services are in fact outsourced to them which could have normally been performed by their customers but for lack of resources or to increase efficiency, the same is contracted out to them. This gives light to the fact that the scope of services is supporting in nature.

- In furtherance of this and in light of the definitions relied above, the scope of services enumerated include within its ambit accounting and processing of transactions. They also procure and contract on their own account with third-party vendors services which are in relation to the business and commerce of the overseas charterers/shipping lines so as to provide an end-to-end support solution by having oversight of the functions of third-party vendors such as checking of the invoices for the transactions entered with third-party vendors or the quality of the third-party port services for the vessels coming/exiting India.
- In support of the above-mentioned contentions, they have placed reliance on a catena of cases extracted below:
  - a. *Global Transportation Services Pvt Ltd. [2016 (45) STR (AAR)] -*
  - b. *Universal Services India Pvt Ltd [91 VST 483 (AAR)*
  - c. *M/s. Evalueserve.com Pvt Ltd v. CST, Gurgaon [2018 (3) TMI-1430 (CESTAT Chandigarh)-*
- The definition of intermediary under Section 2(13) of IGST Act, 2017 give rise to three ingredients to be satisfied:
  - a. He must be a broker or an agent or any other person by whatever name called who arranges or facilitates the supply of goods or services or both.
  - b. The supply arranged or facilitated must be between two or more persons.
  - c. He should not be the person who supplies the goods or services or securities on his own account.
- The facts enumerated herein by them stipulates a transaction wherein the business of the newly incorporated company will be to procure and provide services on a Principal to Principal (P2P) basis. There is no agency agreement between them and their overseas customers who will contract with third-party vendors on their behalf, rather it will be in fulfillment of their business motto.
- It cannot be automatically deemed that the Applicant is an agent of the charterers/shipping lines just because they support the flow of the vessel

into/outside India. It is their business to provide such services wherein their 'value add' is to streamline and deliver real logistics and support value to the charterers/shipping. It cannot be equated to mean anything differently.

- Accordingly, there is no agreement with ship owners to market their vessels for chartering and then subsequently provide logistics and administrative support to such charterers who hire the vessels. This could fall under the meaning of 'facilitation of supply' between the ship owners and charterers where the Applicant could be classified as a 'Ship Broker'. However, it is distinctively clear that there is only one agreement with the charterer/shipping lines, i.e. to manage their vessels effectively when in India and to provide support to that effect. The risks and rewards will also be borne completely by them when procuring said services. The specified services goes beyond providing mere logistics value to their customers and further includes documentation and administrative functions within their ambit so that the day to day vessel functions and compliance to customary laws are also met. Therefore, the proposed transaction will not satisfy the third condition necessary to fulfill the concept of an 'intermediary' under the laws of GST as well as the fact that there is no facilitation happening between the overseas charterers/shipping lines and their end customers in India.
- In furtherance of this, the applicant placed reliance upon following rulings:
  - a. *GoDaddy India Web Services Pvt Ltd [2016 (46) STR 806 (AAR)]* -
  - b. *In Re: M/S. Fulcrum Info Services LLP [2019 (10) TMI 670]* -
- support services to overseas customers or even related/parent companies will not qualify as intermediary service but as export of service. To support this contention, it is pertinent to note that in the advance authority ruling (AAR) of ***In Re: M/S. Nes Global Specialist Engineering Services Private Limited [2019 (11) TMI 478]***, the ruling passed was based on the facts and merits of the case which held that the transaction under debate was not an intermediary service but export of support functions rendered to its parent company. However, the appellate authority has subsequently taken a contrary view and enunciated a ruling based on jurisdictional authority as not being maintainable in the eyes of law. Such ruling is basis the rationale that, to determine export service, ruling will also have to determine "place of supply" provision which as per their opinion is not covered within the ambit of advance ruling. Therefore, the conclusion to such case is based on the jurisdictional challenge faced by the appellate authority whereas the lower

authority has classified the transaction to be exports based on the quality and worthiness of the application wherein all the conditions are satisfied.

- The definition of intermediary in the service tax regime (Pre-GST) is identical to the meaning incorporated under GST laws. Accordingly, it is relevant to refer para 5.9.6 of CBEC Education Guide (2012). In this case, the Indian customers of the charterers are not receiving any service by them. They are not liaising with the customers of the charterers/operators nor providing them any service in lieu of the supply of goods to them. The only service point is with respect to the supply of 'support services' to the charterers/operators.
- To conclude, the the proposed transaction should be classified under SAC 9985 given under Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017. More specifically, under Serial No. 23 (iii) of the above notification under heading SAC 9985 which deals with "Support services other than (i) and (ii) above".

**II. Such support services should be determined as an export of service based on the present facts and circumstances**

- The definition of exports under Section 2(6) of IGST Act, 2017 is broken down into five parts and compared in the table below:

Essentials u/s 2(6) IGST Act, 2017	ELIGIBILITY
1. The supplier of service is located in India	1. The Applicant incorporated under Indian laws is situated in India.
2. The recipient of service is located outside India	2. The recipient of services are foreign charterers/operators of water vessels situated outside India. This is in line with the definition (u/s 2(14) (d) of IGST Act, 2017) of 'location of recipient of Service' which provides that the same would be the usual place of residence, i.e., outside India.
3. The place of supply of service is outside India	3. The place of supply of support services to be provided to overseas customers will be as per Section 13(2) of IGST Act, 2017 i.e., the location of the recipient of services (which is outside India as explained previously).
4. The payment for such service has been received by the supplier of service in convertible foreign exchange <sup>1</sup> [or in Indian	4. Payment will be received in convertible foreign exchange.



rupees wherever permitted by the Reserve Bank of India]	
5. The supplier of service and the recipient of service are not merely establishments of a distinct person	5. The overseas customers/ charterers would not be related to the Applicant and hence, this condition would be fulfilled.

The proposed transaction will satisfy all the conditions provided under 2(6) of the IGST Act, 2017 and hence, should qualify as export of services.

- There have been many rulings which refrain from advancing a ruling on whether a particular transaction ought to be an export of services or goods or both. The rulings iterate and conclude by holding that determining the 'place of supply' provision (which is an essential ingredient to qualify a transaction as an exporting activity) is outside the ambit and jurisdiction of the Advance Ruling. However, based on the recent Kerala High Court ruling of *Sutherland Mortgage Services Inc vs. The Principal Commissioner and Others*, it has been stated that such a question before the Authority of Advance Ruling is maintainable in the eyes of the GST law and that the authority should not adopt a hyper-technical view. Further, the ruling states that the same can be covered within the ambit/provision of 'determination of the liability to pay tax on any goods or services or both' itself and ruling should be pronounced.
- In view of the above factual and legal analysis they have summarized that:
  - a. The services in the form of end-to-end support will be provided to charterers/ operators by them on their own account
  - b. They do not facilitate supply of goods or service between their overseas customers and the India customers of such charterers/ shipping lines
  - c. The Specified Services will be in the nature of 'support services' classified under Serial No. 23 (iii) of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 under heading SAC 9985 which deals with "Support services other than (i) and (ii) above".

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was fixed to be held on 09.11.2021. The applicant vide their e-mail dated 03<sup>rd</sup> November 2021 requested for adjournment. The request was accepted and the case was heard virtually on 30.11.2021. Shri. K. Sivarajan, Partner PWC, the Authorised representative (AR) appeared for the hearing virtually and stated that

- They are unregistered and their questions are covered under Section 97(2)(a) and 97(2)(e) of the GST Act. The AR referred to the Kerala High Court Order in the case of Sutherland Mortgage Services Inc and stated that the question relating to “export of Service” is to be admitted. They referred to ruling extended by Maharashtra AAR, Gujarat AAR and Karnataka AAR after the Kerala High Court order on the issue of ‘export of service’ and stated that the AAR are accepting questions relating to ‘export of service’ and therefore their questions are to be admitted.
- On the merits of the issue, the AR referred to the additional submissions filed vide email dated 30.11.2021. He stated that their activity is not related to cargo but to overseas shipper related to vessel (i.e) managing and supporting activity pertaining to vessels on their berthing, staying and leaving of the vessel. He stated that they are responsible for providing end to end solutions even if they engage third party as sub-contractor. He stated that their services are classifiable under the residuary category of SAC 9985 support service.
- In respect of the Q.No.2, he stated that as per Section 13(2) of IGST Act, since the service recipient is located outside India and they do not qualify as ‘Intermediary’ their activity is ‘export of service’. He also referred to the CBIC circular dated 20.09.2021, in this regard and reiterated the same.
- They were asked to explain with a specific activity which they will be providing in the form of write-up including the agencies with whom they will be dealing and the form of invoices in such situations.

3.2 In the additional submissions filed vide e-mail dated 30.11.2021, they had in addition to the submissions made earlier, they had stated as follows:

- Post the decision of the Kerala High Court in the case of *Sutherland Mortgage Services Inc vs. The Principal Commissioner and Others*, various Advance Ruling Authorities across have admitted applications on the question of determination of ‘place of supply’ and a few are referred under:
  - *Amogh Ramesh Bhatwadekar [MANU/AR/0364/2020]*
  - *Stovec Industries Ltd. [MANU/AR/0290/2020]*
  - *Hilti Manufacturing India Pvt. Ltd. [2021 (8) TMI 781],*
  - *Global Reach Education Services Pvt. Ltd [2018 (8) TMI 392]*
  - *Prettl Automotive India Pvt. Ltd [2020(12) TMI 836-AAR]*
  - *Airbus Group India Private Limited [2021-TIOL-33-AAAR-GST]*

- Based on the above-mentioned rulings they submit that the question of export of service raised by the Applicant should be admitted by considering the same in relation to determination of liability
- Their main intention is to provide end-to-end solutions to its overseas customers in the form of assisting/supporting it while its vessel(s) arrive in India. As a result, they intend to supply 'support services' in line with the classification under SAC Code 9985 so that the shipping lines/charterers are not worried about the paperwork or other routine & customary formalities involved for the ships coming into India.
- They provide a one-stop solution to manage vessel related activities in India, along with their expertise, availability of resources, increase in efficiency etc. The service recipients (overseas shipping lines/charterers) may not have full knowledge of the process involved including the governing laws (as it differs from country to country) relating to vessel calls and vessel related functions when entering, berthing and exiting the ports of India and that is the bridge that they aim to cover through its bouquet of administrative and vessel management services. They will have the necessary expertise to support the business/function of the vessel during such limited time and period, but it will nonetheless offer various services so that support is fully given from an end-to-end perspective.
- They would be the single point of contact for all such vessel related functions from the time it has to enter and move out of the ports and would provide timely reports and port logs so that the shipping line/charterers know exactly what is to be done and do not have to take the burden of managing any vessel function in India
- Services proposed relate to the administration and management of the logistics operations of the ships/vessels while entering/leaving the Indian ports and are confined to the vessel and crew related functions. They are responsible for managing, planning, resolving and monitoring the entire activity of vessel calls through their own operations teams and service providers.
- The scope includes all the activities in supporting and management of the vessels (and its crew) when the vessel has entered, berthed at the port by supplying/provision of goods and services for docking, maintenance of the vessel, ship repairs, attending the needs of the crew where ordinarily a shipping line would have had to reach out to other service providers. And

then finally planning and providing services for exiting the ports of India, documentation related services and supporting in undertaking necessary compliances for inward and outward movement of the vessels.

- The overseas shipping lines/charterers deal with the transportation of cargo from different countries while they provide a unique value add by providing complete support to their business by catering to their vessels so that there is ease of doing such business in India for charterers/shipping lines. While the main activity of transporting goods belongs to the overseas shipping lines/charterers, the activity of managing the vessel (and not cargo) to enter, berthing, providing goods and services for the day-to-day running and leaving the Indian ports belong to the Applicant. This is a minor subset of the vessel related function which is outsourced to them (and confined to only India territory) when the shipping line/charterer embarks on its journey from other countries and yet, it is a completely different activity when compared to transportation of cargo (including cargo handling etc.).
- They are concerned only with vessel operations when entering/exiting India where services are provided on own account. They do not deal with last mile delivery to the end customers and are not in any way related to liaising with the end customers. Thus, there is no relationship between them and the end customers of the overseas charterers/shipping lines.
- They are an independent contractor providing services on their own account (on principal-to-principal basis) to their customers i.e., the overseas charterers/shipping lines (refer clause 22 of Section 6 of the draft SLA)
- Even in cases where third parties/service providers are engaged, they are responsible for their activities. The service arrangements with the third-party contractors will be dehors the contractual arrangement between them and their customers (i.e., overseas shipping lines/charters). The appointment of third parties will not create any principal-agent relationship between the service recipient and such third parties (refer clause 5 of section I of the draft SLA).
- They are liable to insure against negligent acts and undertake public liability insurance in relation to their proposed service. The service recipient is also required to maintain shipowners' protection and indemnity insurance or charterer's cover.

- The entire service offering will be for a lump sum fee to the overseas shipping lines/charterers where end to end support solution of vessel operations will be provided. They will not be receiving any consideration in form of agency fees.
- The services provided by them are on their own account and not in the nature of intermediary services. This is explicit and clear from the scope of activities and the nature of relationship discussed above. This is also further augmented by a recently released Circular No. 159/15/2021-GST dated 20 September 2021 ('Circular') by CBIC which enumerates certain principles which help in rationalizing the fact that they are not intermediary in nature and that services are provided independently to the overseas shipping lines/charterers:
  - A. The Circular clarifies qualification as an intermediary requires minimum three (3) parties. This is absent in the present case where the Applicant directly engages with the overseas shipping lines/charterers.
  - B. Intermediary does not include a person who supplies goods or services or both on his own account. The Applicant provides its services on Principal-To-Principal basis (P2P).
  - C. Sub-contracting for a service is not an intermediary. An important exclusion from intermediary is subcontracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors.
- It is mandatory for all Departmental Officials to follow the instructions or directions issued under Section 168 of the CGST Act, 2017. It is settled law that the guidance of the Circular should mandatorily be followed and reliance in this placed on the following judicial decisions rendered by the Hon'ble Supreme Court of India:
  - SACI Allied Products Ltd. Uttar Pradesh Vs. CCE, Meerut AIR 2005 SC 4031.
  - RDB Textiles Ltd Vs. CCE & ST, Kolkata-IV2018 (359) ELT 433 (SC).

3.3 The applicant vide their letter dated 24-12-2021 furnished the following pursuant to virtual hearing on 30-11-2021:

- The proposed transaction is to provide **end-to-end solutions** to their overseas customers in the form of assisting/supporting them while their vessel(s) arrive in India. As a result, the Applicant intends to supply 'support services' in line with the classification under HSN Code 9985 so that the shipping

- lines/charterers are not worried about the paperwork or other routine & customary formalities involved for its ships coming into India.
- In a normal scenario, shipping lines may be required to co-ordinate with each separate vendor such as port agent, freight forwarder, port authorities etc. in respect of the vessels' entry, berthing and exit out of the Indian Port. As a part of its business solution, they will be acting as a single service provider providing all the services that may be required by the shipping lines with regard to arrival and departure of the Vessel from the Indian ports and the services may commence pre-arrival of the vessel and continue from the time the Vessel arrives till the time it leaves India.
  - The details of the end-to-end solution which includes the 'specified activities' is provided as per the scope of services at para 6 of the proposed Service Level Agreement ('SLA') and are extracted at para 10 of Exhibit II of the application dated 23 August 2021. All the activities would be provided by the applicant to their customers on a principal-to-principal basis as specified at clause 22 of the SLA. To this end, the Applicant will be contracting with the shipping lines to perform all the specified activities directly and bear the responsibility, risks and rewards of the entire transaction.
  - The risk of loss/damage on account of the activities that they will provide to their customers would be on their account. This is also specifically provided at clause 16 of the proposed SLA.
  - The Applicant will be providing all the services required with regard to the vessel as a single service provider, for a lump sum fee on a principal-to-principal basis and would not be charging any consideration in form of agency fees.

They requested to be granted with another hearing.

4.1 The applicant was extended another hearing on 20.01.2022. Shri. K. Sivarajan, Partner; Parag Chavan, director, PWC, Rakesh Kumar Gupta, director Translog, the Authorised Representatives appeared for the hearing virtually. They stated that the activities proposed relates to Overseas Shipping Vessel and not to the Cargo. They reiterated their submissions dated 24<sup>th</sup> December 2021 and stated that in the proposed model all the required activities for berthing/Light House dues/ Customs documentation/Ship repair services/Survey/Launch hire services will be undertaken by them for a 'Lump sum Payment', i.e., from the Ship liner perspective,

they will be the only service provider. They were asked whether they hold CHA license and other in-house facilities for providing the proposed activities. It was replied that at present they don't have all the requirements in-house and in due course they may have it in-house. The ruling is sought on the contractual level, to ensure whether the activity is a 'support Service' and an 'Export of service.' They were asked to furnish a write-up on the proposed channel of remittance of consideration and any further documents substantiating the proposed activities, like any correspondences with the proposed service recipients.

4.2 The applicant vide their submissions dated 08.02.2022, stated that

- they will receive payment of their fees in convertible foreign exchange from the vessel owners/charterers located outside India, through normal banking channel.
- the proposed transaction would satisfy all the conditions under Section 2(6) of the IGST Act and hence would qualify as export of services.
- It is also pertinent to emphasize on the significance of the contract terms in determining the taxability and it is a settled law that the main intention/objective of the transaction and the nature of the transaction including the relationship between the contracting parties has to be understood from the terms of the contract/agreement. In this regard, the proposed agreement has the following clauses:
  - a. Independent contractor clause (Clause 23 of representative agreement)
    - There is no principal-agency relationship between the Applicant and its customers. The Applicant is an independent contractor where it is entering into a contract with the customers on a Principal-to-Principal basis (P2P basis).
  - b. Liability of third parties (Clause 5 of representative agreement) - The Applicant, as end-to-end service provider, shall be responsible for any loss or damage to the customers arising from third parties' negligent, reckless or wilful acts or omissions in the discharge of their obligations under the proposed agreement.
  - c. Insurance (Clause 16 of representative agreement) – The Applicant has the obligation to maintain adequate and appropriate insurance cover for the performance of its service.
- their proposed transaction with the vessel owners/charterers is a principal to principal transaction. All the risks and rewards of the proposed transaction

are to be borne by them and a lump sum fee will be charged by them for services provided to their customers. They have relied on Supreme court ruling in case of ***State of Orissa and Others v. Titaghur Paper Mills Company Limited [MANU/SC/0325/1985]***

- the sub-contractors (appointed, as and when required, by them) have no relationship or privity with their customers. They would be responsible to their customers for the end-to-end services. The sub-contractors would be responsible for their component of the services to the Applicant's who have engaged them. The Applicant do not act as an intermediary.
- circular 159/15/2021-GST dated 20<sup>th</sup> September 2021 issued to clarify on doubts of intermediary services also supports that they are not an intermediary. Para 3.5 of the said circular clarifies that sub-contracting for a service is not an intermediary service. Circular clarifies that the supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors but this arrangement of sub-contracting does not make service of either principal or sub-contractor as an intermediary service.
- They requested additional time to submit further documents substantiating the proposed activities. In this regard, they would submit information related to their marketing material in relation to their proposed transaction.

4.3 The applicant furnished the marketing related information pertaining to their proposed business vide their letter dated 10.03.2022.

5.1 The State Jurisdictional Authority, Thiruvallikeni Assessment Circle, who has the administrative Jurisdiction over the applicant vide letter RC. No. 101/2021/A-3, dated: 29.09.2021 has stated that:

- The Applicant's place was verified by the Deputy State Tax Officer and the verification report is as follows:
  1. Director/Authorised Signatory of the company is not available and their relative is only available.
  2. The above said place is fully residential.
  3. Since, the Director is at Mumbai, they have not produced any documents at the time of verification and thro' phone, informed to produce the documents. The dealer have submitted the following documents for processing of AAR application.



- 1) Schedule 6.12/Contingent Amounts under the Agreement
- 2) Certificate of Incorporation
- 3) Memorandum of Association (MOA)
- 4) PAN details of Translog Direct Pvt. Ltd.
- 5) Aadhar Card of Director/Promoter details.

5.2 The State Jurisdictional Authority, Thiruvallikeni Assessment Circle, vide letter RC. No. 101/2021/A-3, dated: 02.11.2021 has stated that:

- The applicant is a newly incorporated company incorporated under the Companies Act 2013 and not currently registered under GST.
- They aim to streamline and provide services in the Marine Industry by providing end to end support services to overseas shipping lines/Charterers such as crew related activities, documentation support services, administrative functions and other customary activities when entering/exiting the Indian Ports to its Foreign Clients. They will be offering support services to their customers located outside India on a Principal-to-principal basis.
- The customers of the Applicant are in the business of Chartering vessels for transportation of goods into India and moving goods outside India and for the Provision of aforesaid services, they will render services to vessels/Ship owners to ensure smooth operation while the vessel/ship is in India. The Applicant's main intention is to provide end to end solution to its overseas customers in the form of assisting/supporting it while its vessel(s) arrive in India. As a result, the Proposed Company intends to supply 'support services' in line with the classification under SAC Code 9985 so that the shipping lines/Charterers are not worried about the paper work or other routine and customary formalities involved for its shipments coming into India for further transport.

and had opined that the referred services of the Applicant will not come under the services Accounting Code (SAC) 9985.

6.1 The Center Jurisdiction authority, has stated that there is no pending proceedings in respect of the applicant on the questions raised by them in the application.

7.1 We have carefully considered the application, additional submissions made in pursuance of the virtual personal hearing and the remarks of the State Jurisdiction Officer, viz., State Tax Officer, Thiruvallikeni Assessment Circle and the Central Tax Officer. The applicants are registered under the Companies Act but not under the GST Act. They have stated that they propose to provide end-to-end services to the shippers located outside the Indian territory with respect to the vessels of such customers, when their vessels call on the Indian Port. They have stated that the services proposed relates only to the vessel when they call on Indian Ports and not related to the Cargo the vessel carry. They have sought ruling on the following questions:

1. The Applicant would like to seek a ruling on whether the provision of specified services would qualify as "support services" under SAC 9985 of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017.

2. The Applicant would also like to seek a ruling on whether such support services would be considered as export of services based on the present facts and circumstances.

7.2 The admissibility of the above questions before this authority is *prima-facie* discussed. Question number 1 above, seeks to clarify the applicable classification of the services proposed to be provided by the applicant and therefore the question is admissible before this authority under Section 95(a)/97(2) of the GST Act 2017.

7.3 Q.No. 2 seeks to clarify whether the proposed service would be considered as 'export of services'. 'Export of Service' is defined under Section 2(6) of IGST Act, which is as below:

'Export of Services' means the supply of any service when,-

- (i) the supplier of service is located in India;
- (ii) the recipient of the 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 the 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;

Section 97(2) of the CGST Act / Tamil Nadu GST Act (TNGST) gives the scope of Advance Ruling Authority, i.e., the question on which the Advance Ruling can be sought. For ease of reference, the section is reproduced as under:

97 (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.

From the above, it is evident that 'advance ruling' are decisions on questions specified in sub-section 97(2) of the Act in relation to the **supply** of goods or services undertaken or proposed to be **undertaken by the applicant** seeking the same. In the case at hand, to determine whether the supply amounts to 'Export of Service', the 'Place of supply of service' is to be determined and 'Place of Supply' is not within the ambit of this authority as per Section 97(2) above. In this regard, the applicant has placed reliance on the ruling of Sutherland Mortgage Services Inc Vs. The Principal Commissioner and Others [2020(3)TMI 186], wherein the Kerala High Court has stated as follows:

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 aforesaid 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 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 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.*

In the case at hand, it is seen that to determine whether the proposed service will amount to 'Export of Service', it becomes necessary to examine the 'Place of Supply of Service', i.e., whether it falls within the taxable territory or otherwise and on deciding the place of supply, the liability to pay GST by the applicant on the said service is arrived. Hence, applying the ratio of the above decision of Kerala High Court, mentioned above, it appears that the Question No. 2 raised by the applicant is to be taken up for consideration on Merits. Accordingly, both the questions are taken up for consideration on merits.

8.1 The applicant has stated that they propose to offer support services to their customers located outside India on a Principal- to- Principal basis (P2P). The customers of the applicant are in the business of chartering vessels for transportation of goods into India and moving goods outside India and for the provision of aforesaid services, they propose to render services to vessels/ship owners to ensure smooth operations while the vessel/ship arrive in India. They have stated that they are concerned with vessel operations when entering/exiting

India and the nature of support services to such charters' will be to provide services in an aligned, efficient and coordinated manner so that the overseas charterers can utilize port, documentation and related services. They have stated that following as the primary functions which would be performed by them, viz:

- Handling all registration, approval, advance payments and formalities regarding the arrival and departure of the vessel towards port and Government authorities.
- Co-ordinate all activities of port, as set forth in the Agreement, in order to ensure the proper performance of all customary requirements for the operation of the service recipient's vessels in the Territory; and Co-ordinate with stevedores and other relevant parties, reporting to appropriate authorities and arranging and checking documentation;
- Up-to-date reporting to the Service Recipient, the vessel's position and preparing a statement of facts of the call and/or a port log providing full overview of the current status of operations. Further, providing statistics and historical information as may be reasonably requested by the service recipient;
- Attend the Master and all crew matters, consular requirements, organizing medical and dental treatment and supervising crew changes;
- Applicant will provide documentation support service by issuing such documents as may be needed for customary requirements for in inward/outward movement of the Service Recipient's vessels.
- Order and receive goods, services and supplies for the vessel; Make arrangements for receiving bunkers (fuel)
- Arrange and coordinate repairs including spares and professional services; and Perform all other activities to support the day to day running of the vessel while in Port including overseeing or supervising the functions of third parties engaged by them.
- Service recipient's requirements concerning claims handling. All expenses involved with claims handling are for the Service Recipient's account.

8.2 The applicant has claimed that the services will be in the nature of 'support services' classifiable under Sl. No. 23(iii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 under heading SAC 9985 which deals with "Support Services other than (i) and (ii) above. The relevant entry and the classification of the services are taken up as below:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
23	Heading 9985 (Support services)	(i) Supply of tour operators services. <i>Explanation.-</i> "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. Provided that credit of input tax charged on goods and services used in supplying the service[, other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)] <sup>80</sup> has not been taken [Please refer to <i>Explanation</i> no. (iv)] 2. The bill issued for supply of this service indicates that it is inclusive of charges of
				accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		[(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to <i>Explanation</i> no. (iv)]. <sup>81</sup>
		[(iii) Support services other than (i) and (ii) above.	9	-] <sup>82</sup>

As per Annexure to the said Notification, which gives the scheme of classification, the Heading 9985 covers the following services:

<b>Annexure: Scheme of Classification of Services</b>			
<b>S.No.</b>	<b>Chapter, Section, Heading or Group</b>	<b>Service Code (Tariff)</b>	<b>Service Description</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
400	<b>Heading 9985</b>		<b>Support services</b>
401	<b>Group 99851</b>		<b>Employment services including personnel search, referral service and labour supply service</b>
402		998511	Executive or retained personnel search services
403		998512	Permanent placement services, other than executive search services
404		998513	Contract staffing services
405		998514	Temporary staffing services
406		998515	Long-term staffing (pay rolling) services
407		998516	Temporary staffing-to-permanent placement services
408		998517	Co-employment staffing services
409		998519	Other employment and labour supply services nowhere else classified
410	<b>Group 99852</b>		<b>Investigation and security services</b>
411		998521	Investigation services
412		998522	Security consulting services
413		998523	Security systems services
414		998524	Armoured car services
415		998525	Guard services
416		998526	Training of guard dogs
417		998527	Polygraph services
418		998528	Fingerprinting services
419		998529	Other security services nowhere else classified
420	<b>Group 99853</b>		<b>Cleaning services</b>
421		998531	Disinfecting and exterminating services
422		998532	Window cleaning services
423		998533	General cleaning services
424		998534	Specialised cleaning services for reservoirs and tanks
425		998535	Sterilisation of objects or premises (operating rooms)
426		998536	Furnace and chimney cleaning services
427		998537	Exterior cleaning of buildings of all types
428		998538	Cleaning of transportation equipment
429		998539	Other cleaning services nowhere else classified
430	<b>Group 99854</b>		<b>Packaging services</b>
431		998540	Packaging services of goods for others
432		998541	Parcel packing and gift wrapping
433		998542	Coin and currency packing services
434		998549	Other packaging services nowhere else classified
435	<b>Group 99855</b>		<b>Travel arrangement, tour operator and related services</b>
436		998551	Reservation services for transportation
437		998552	Reservation services for accommodation, cruises and package tours
438		998553	Reservation services for convention centres, congress centres and exhibition halls
439		998554	Reservation services for event tickets, cinema halls, entertainment and recreational services and other reservation services
440		998555	Tour operator services
441		998556	Tourist guide services
442		998557	Tourism promotion and visitor information services
443		998559	Other travel arrangement and related services nowhere else classified
444	<b>Group 99859</b>		<b>Other support services</b>
445		998591	Credit reporting and rating services
446		998592	Collection agency services
447		998593	Telephone-based support services
448		998594	Combined office administrative services
449		998595	Specialised office support services such as duplicating services, mailing services, document preparation and the like
450		998596	Events, exhibitions, conventions and trade shows organisation and assistance services
451		998597	Landscape care and maintenance services
452		998598	Other information services nowhere else classified
453		998599	Other support services nowhere else classified

Thus, it is evident that the Heading 9985 covers 'Support Services'-

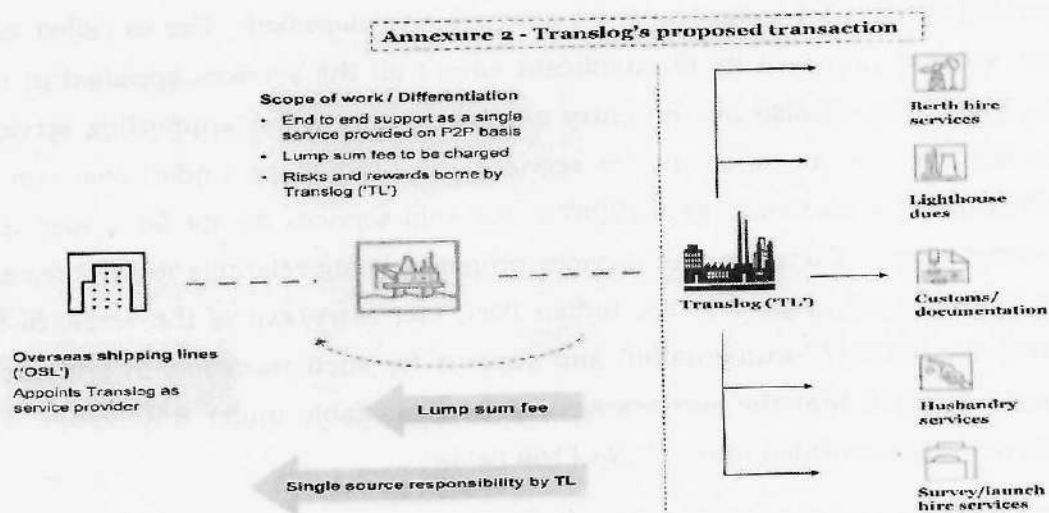
- Employment services including personnel search, referral service and labour supply service;



- Investigation and security services
- Cleaning services
- Packaging services
- Travel arrangement, tour operator and related services
- Other support services

The services proposed to be provided by the applicant to their clients are end to end requirements of the vessel when such vessel calls on the Indian Port. This being in the nature of supporting the activities of their clients, the applicant states that the services are covered under 'Supporting Services -others'. On going through the various service description under the Heading 9985, we find that the services of the applicant, may at best fit under 'SAC 998599- Other support services nowhere else classified'. To be sure that the services are not classified elsewhere, the classification annexure of the Notification No. 11/2017-C.T.(Rate) is examined.

8.3 The applicant has submitted the proposed services as:



The services proposed as per the write-up and the pictorial representation above, is Berth hire services for docking the vessels; Lighthouse dues; customs/documentation for the vessel to enter/exit the territorial waters/port; husbandry services; Survey/Launch hire services; Requirement of Crew/fuel for the vessels. Thus, it is seen that the applicant extends vessel related services, supporting the shipper to facilitate the entry/exit of the vessel in the Indian Ports, i.e., the services are more in the nature of 'support services for transport of vessels' and more aptly will be classifiable under SAC 9967. The relevant entry of the Annexure is as below:

Annexure: Scheme of Classification of Services			
S.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
144	Group 99675		Supporting services for water transport (coastal, transoceanic and inland waterways)
145		996751	Port and waterway operation services (excluding cargo handling) such as operation services of ports, docks, light houses, light ships and the like
146		996752	Pilotage and berthing services
147		996753	Vessel salvage and refloating services
148		996759	Other supporting services for water transport nowhere else classified

The above Group covers supporting services of Port (excluding cargo handling), which is the case at hand. Further, the above service description includes supporting services of ports, docks, lighthouses, pilotage, berthing and other supporting services for water transport nowhere else classified. The so called 'end-to end' services proposed by the applicant covers all the services specified in this Group 99675, which also has an entry accommodating 'other supporting services' under 996759. In as much as the services proposed to be undertaken can be classified under a particular group '99675', the said services do not fall under 'SAC 9985-other n.e.c.'. Therefore, the services proposed being relatable to the presence of the Vessel of the shipper in the Indian Port, i.e., entry/exit of the vessel in the port and the liaison/documentation and support for such transport in and out of the port, we hold that the services are rightly classifiable under SAC 9967. The applicable rate is provided under Sl.No.11(ii) below:

11	Heading 9967 (Supporting services in transport)	[(i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). <i>Explanation.-</i> "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]
			or	
			6	Provided that the goods transport agency opting to pay central tax @ 6% under this entry shall, thenceforth, be liable to pay central tax @ 6% on all the services of GTA supplied by it.] <sup>60</sup>
		(ii) Supporting services in transport other than (i) above.	9	-

Thus, we hold that the services are support services classifiable under SAC 9967 and the applicable rate is as per Sl.No. 11(ii) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended.

9.1 The next question for consideration is whether such support services would be considered as export of services. 'Export of Service' is defined under Section 2(6) of the IGST Act, 2017 as follows:

*(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 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;*

Applying the above, to the case at hand, the applicant being the supplier of service is located in India; the recipient of service are stated to be persons not located in India; the payment for the services is stated to be proposed to be received in convertible foreign exchange or in Indian Rupees as permitted by RBI and the supplier and recipients have not been shown before us as merely establishments of a distinct person. Thus, the only condition to be examined is whether, the 'Place of Supply' of service is outside India.

9.2 'Place of Supply of Services' in the case at hand are governed by Section 13 of IGST Act, 2017. Section 13(2) of the Act provides as under:

*(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.*

The applicant contends that the services proposed to be rendered are in the nature of assisting in the administration and managing the logistics/operation of the ships/vessels while entering /leaving the ports of India; the services are provided to persons located outside India and is undertaken on a Principal to Principal basis and not as an Intermediary. Therefore, their claim is that the Place of Supply for the proposed supply is the place of recipient of such service, which is outside India.

9.3 From the submissions, it is evident that the proposed services are in the nature of 'Support Services' rendered for facilitating the vessel of the service recipient to enter/exit the Indian Port. The proposed services as listed in Para 8.1, shows that the activities proposed to be undertaken are

- facilitating/obtaining required registrations, approvals, formalities regarding the arrival & departure of the vessel in the Indian territory;
- ensure proper performance of all customary requirements for the operation of the service recipients' vessel in the territory;
- attending to the requirements of Master and crew;
- Making arrangements for supply of bunker fuel, etc for the vessel;
- Coordinate repairs & perform all activities to support the day to day running of the vessel while in port.

From the above, it is seen that the services extended are to enable the vessel reach the port; leave the port and undertaking repairs/ requirements of the vessel & crew when such vessel is in the Indian territory. Thus, the entire gamut of services are towards bringing the vessel(goods) to the Port, enabling the vessel(goods) leave the port and undertaking repairs, requirements of the vessel(goods) and therefore, it is seen that the services extended are intrinsically rely on the presence of the Vessel(goods) in the Indian territorial waters/port.

9.4 In this situation, the applicable 'Place of supply' is taken up. Section 13(3) of the IGST Act reads as:

*(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:*

In the case at hand, the applicant is extending the 'support services for water transport' which includes services facilitating berthing of the vessel, liaising with jurisdictional authorities and attend to the requirement of the vessel when the vessel is in Indian territory and the service jurisdiction of the applicant rests with the applicant until the vessel exits the Indian waters. Thus, the applicant extends vessel related services to their customers when the vessel enters the Indian territory and the service with respect to the said vessel ends when the vessel exits the Indian territory. In other words, the proposed services are rendered in respect of the vessels which are physically available in the Indian Territory and therefore, we find that the proposed services are squarely covered under Section 13(3) above.

Accordingly, the place of supply of service in the location where the services are actually performed, which is the taxable territory.

9.5 Having decided that the 'Place of supply' is the taxable territory wherein the vessels call in, the condition of the place of supply being outside India is not satisfied in the case at hand. Therefore, the proposed supply is not an 'Export of Service'. Accordingly, the proposed supply classifiable under SAC 9967 is taxable to GST @ 18% under sl.No. 11(ii) of the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended read with Sl.No. 11(ii) of Notification No.II(2)/CTR/532(d-14)/2017 in G.O. Ms.No.72, CT&R(B1), dt.29-6-2017. In view of the above findings, the claim of the applicant that they are not 'Intermediary' under GST and therefore, their location, i.e., the taxable territory is not the Place of Supply as per Section 13(8) of IGST Act 2017 is not examined as considered Void.

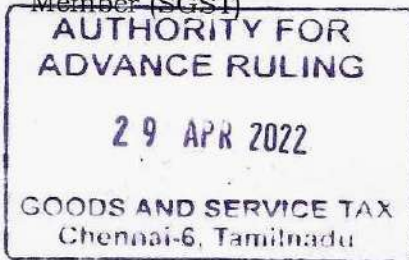
10. In view of the above, we rule as under:

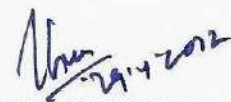
#### **RULING**

**Question No.1.** The Applicant's business/ proposed transaction is liable to be classified under SAC 9967 and is liable to CGST @ 9% as per Sl.No. 11(ii) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 & to SGST @9% as per Sl.No. 11(ii) of Notification No.II(2)/CTR/532(d-14)/2017 in G.O. Ms.No.72, CT&R(B1), dt.29-6-2017.

**Question No.2 .** The proposed services is not an '**Export of Service**' as per Section 2(6) of IGST Act, 2017 in as much as the Place of Supply is not outside the taxable territory.

  
Smt. K.LATHA  
Member (SGST)



  
Shri T.G.VENKATESH  
Member (CGST)

To

1. M/s Translog Direct Pvt. Ltd.,  
13/6, Judge Jumbulingam Street, Mylapore,  
Chennai- 600004 // **BY SPEED POST WITH ACK.DUE** //

2. M/s . Translog Direct Pvt. Ltd.,  
C 301, Harshvardhan CHSL,  
Saki Vihar Road, Andheri East,  
Mumbai Bandra Suburban, Mumbai 400 072.

**// BY SPEED POST WITH ACK.DUE //**

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,  
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes, IInd  
Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Chennai North Commissionerate  
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
4. The Assistant Commissioner(ST), Triplicane Assessment Circle,  
Integrated Commercial Taxes & Registration Department,  
South Tower, Room No. 420 & 421, IV Floor,  
Government Farm Building, Nandanam, Chennai – 600 035.
5. Master File/ Spare – 2.