

**AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
HOTEL SAMRAT, 4TH FLOOR, KAUTILYA MARG, CHANAKYAPURI
NEW DELHI**

PRESENT

**Dr. Justice Arijit Pasayat (Chairperson)
Shri Y.G.Parande(Member)**

The 26th August, 2013

**Ruling No. AAR/ ST/ 03/2013
In
Application No. AAR/44/ST/12/12-13**

**Applicant : M/s Tandus Flooring India Private Limited,
#967, II Floor, 12th Main Road, HAL II Stage,
Indiranagar, Bangalore-560 008 Karnataka, India**

**Commissioner
Concerned : The Commissioner of Service Tax
Service Tax Commissionerate
No. 16/1, S.P. Complex, Lalbagh Road,
Bangalore-560 027**

Present for the Applicant: Shri Nageshwar Rao, Advocate

Present for the Commissioner: None

**Ruling
(Y.G.Parande, Member)**

This is an application filed by M/s Tandus Flooring India Private Limited, #967, II Floor, 12th Main Road, HAL II Stage, Indiranagar, Bangalore- 560 008, Karnataka (the Applicant, for short), under Section 96C of the Finance Act, 1994 (the Act), seeking an advance ruling on the following questions:

Question No. 1: What would be the place of provision of the marketing and support services provided by Tandus India to Tandus US and Tandus China in terms of the Place of Provision of Service Rules 2012 (introduced vide Notification No. 28/2012 – S.T. dated 20-6-2012)

Question No. 2: Whether the marketing and support services provided by Tandus India to Tandus US and Tandus China would qualify as export of taxable services under Rule 6A of the Service Tax Rules , 1994 (as amended from time to time)(introduced vide Notification No. 2/94 – S.T. dated 28.6.1994.

2. It has been stated in application that the applicant is a wholly owned Indian Subsidiary of M/s Tandus Flooring Asia Pte Ltd # 8 Ubi Road 2, #01-06 Zervex, Singapore – 408538. It has been further stated that the Tandus Group is a leading manufacturer of floor covering products with manufacturing and sales operations across the world and has set up the applicant company with the objective of strengthening and enhancing sales of its products to its Indian customers. The mandate of the applicant is to provide marketing and sales support for the distribution of floor coverings or carpet manufactured outside India and sold to the customers in India by M/s Tandus Flooring US LLC, located in the United States of America (Tandus US, for short) and Tandus Flooring (Suzhou) Co. Ltd, located in China (Tandus China, for short). The applicant would undertake the responsibility of providing market and support services in relation to the carpets and floor coverings proposed to be sold by Tandus US and Tandus China to the customers located in India through their own dealers or directly. The applicant proposes to enter into Marketing and Sales Support Services agreements with Tandus US and Tandus China. The proposed agreements provide for rendering of the following services by the applicant:

- (a) Promoting and marketing of the products of the service recipients in India;
- (b) Demonstrate the products to the customers in India;
- (c) Communicate all the relevant information to the customer(s) in connection with the services rendered;
- (d) Management of Dealer accounts and projects;

- (e) Working with the facility managers, in-house architects and / or designers, contractors of the customers of Service recipients in order to assist the customers in selecting the products, based on factors such as budgets etc.;
- (f) Communicate to the Service Recipients about the customer's comments / decision / orders etc; and
- (g) Provide written reports regarding client contacts, market development, competition, pricing, advertising, potential or new market for the new competing products and their pricing.

3. In consideration of the services to be provided by it, the applicant will receive service fees in freely convertible foreign exchange from Tandus US and Tandus China. The fees will correspond to the operating costs of the applicant and arm's length markup determined in accordance with the transfer pricing laws in India. The fees would include any inter-company service fee paid by the applicant to group companies for any service received by them from such group companies. It was further clarified during the hearing that the applicant would not receive any payment from the dealers of Tandus US or Tandus China (who are the service recipients) or from any other quarter in connection with the services to be provided under the proposed agreements. It was also clarified during the hearing that the scope of dealer management under the proposed agreement was limited to the applicants acting as a communication channel between the Indian dealers and Tandus US and Tandus China.

4. On the questions presented for ruling, the applicant's submissions are as follows:

Question No.1.

The applicant has submitted that they are clearly covered by Rule 3 of Place of Provision of Service Rules, 2012 notified by the Government of India vide Notification No. 28/2012-ST dated 20/06/2012 for the following reasons

- (a) The two key elements of taxability of a transaction under the service tax legislation (Sec. 66B of the Act) are
 - 1. It satisfies the definition of "service" in Sec. 65(44) of the Act; and

2. It is rendered in the taxable territory.

The activity proposed to be undertaken by them is squarely covered by definition of service vide Section 65(44) of the Act. However, it is for the second aspect that the Place of Provision of Service Rules, 2012 become relevant.

(b) Rule 3 of the said Provision of Service Rules, 2012 stipulates that place of provision of a service generally shall be location of the service recipient. This is the default provision from which the succeeding rules carve out exceptions.

(c) They are covered by none of these exceptions, namely Rules 4 to 12 of these Rules. Consequently in their case the place of provision of service shall be the location of the service recipients.

Therefore, according to their understanding, the place of provision of services rendered by them to Tandus US and Tandus China shall be location of Tandus US and Tandus China respectively, outside India.

Question No.2

On question No. 2 the applicant has submitted that their case would qualify as export of service under Rule 6A of Service Tax Rules, 1994 as amended. The basis given by them for this stand is that they satisfy all the conditions required to be satisfied under Rule 6A(1) of the rules *ibid* for qualifying an activity as amounting to export of service, namely

- (a) The provider of service is located in the taxable territory,
- (b) The recipient of service is located outside India,
- (c) The service is not a service specified in Section 66D of the Act,
- (d) The place of provision of the service is outside India,
- (e) The payment for such service has been received by the provider of service in convertible foreign exchange, and

- (f) The provider of service and the recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 to clause (44) of section 65B of the Act.

The location of the applicant is within the taxable territory as its business premises are at Bengaluru, Karnataka. The recipients of service are located outside India. The service proposed to be provided by the applicant does not figure in the negative list specified in Sec. 66D of the Act. In terms of Place of Provision of Service Rules, 2012, the place of provision of service is outside India. The applicant would be receiving payment in convertible foreign exchange. The applicants, as well as the recipients of service, are independent legal entities, and not merely establishments of a distinct person, as evidenced by the certificates of incorporation under the respective laws, copies of which have been furnished by them. Consequently, the bar under clause of (f) above would not apply to their case. Therefore, according to them, the case meets the requirements of rule 6A of the rules and the answer to Question No. 2 is in the affirmative.

5. The Commissioner in his comments has confirmed that this is a case of service proposed to be provided from Indian territory to a business entity located outside India. Referring to CBEC's circular No. 111/5/2009-ST dated 24.2.2009, he has stated that the benefit of service accrues outside India and therefore according to him this case falls within the meaning of export of services. While confirming the factual aspects of application, he has broadly concurred with the stand taken by the applicant.

6. Having considered the averments made in the application and during the hearing and the comments of the concerned Commissioner, we of the view that the place of provision of service would be determined by rule 3 of Place of Provision of Service Rules, 2012 and the place of provision would be the location of the service recipients, namely Tandus US and Tandus China.

7. We also hold that the provisions of Rule 6A of Service Tax Rules, 1994 are satisfied in this case and therefore this would be a case of export of service.

8. On the questions on which advance ruling has been sought we, accordingly, rule that:

1. The place of provision of service to be provided by the applicant to Tandus China and Tandus US shall be the location of the service recipients, i.e. in China and US respectively, in accordance with Rule 3 of Place of Provision of Service Rules, 2012; and
2. The provision of service by the applicant to the two recipients named above will amount to export of service within the meaning of Rule 6A of Service Tax Rules, 1994.

9. It hardly needs to be added that if any material difference is noticed in the facts relating to the transaction when the actual determination is made, it would be open to the concerned authorities to act appropriately according to law.

Sd/-

(Y.G.Parande)
Member

Sd/-

(Dr. Justice Arijit Pasayat)
Chairman