	<b>KERALA AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX DEPARTMENT,</b> <b>TAX TOWER, KARAMANA,</b> <b>THIRUVANANTHAPURAM – 695002</b>
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**BEFORE THE AUTHORITY OF :** Shri. Sivaprasad S, IRS &  
: Shri. Senil A K Rajan

Legal Name of the applicant	M/s. Sutherland Mortgage Services Inc.
GSTIN	32AARCS6969G1ZQ
Address	5 <sup>th</sup> Floor, 1, Technopolis, Cochin Special Economic Zone, Kakkanad, Kochi, Ernakulam – 682037.
Advance Ruling sought for	Whether supply of services by India Branch of M/s.Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the inter company agreement with M/s. Sutherland Mortgage Services Inc. USA.
Date of Personal Hearing	28.10.2020
Authorized Representative	Shri. K.Sivarajan

**ADVANCE RULING No. KER/96/2021 dated 07.05.2021**

1. M/s. Sutherland Mortgage Service Inc, 5<sup>th</sup> Floor, 1, Technopolis, Cochin Special Economic Zone, Kakkanad, Ernakulam – 682037 (**hereinafter referred to as the applicant**) is an Indian branch of M/s. Sutherland Mortgage Service Inc, USA. (**hereinafter referred to as “SMSI, USA”**) The Applicant is registered under Goods and Services Tax in the State of Kerala and are holders of GSTIN 32AARCS6969G1ZQ.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KGST Act, Rules and the notifications issued there under.

**BRIEF FACTS OF THE CASE:**

3. The applicant is primarily engaged in the business of providing information technology enabled services such as mortgage orientation and related services. The applicant was established as a branch of SMSI, USA as the mortgage laws of United States of America prevented its Head Office from outsourcing of its work to any other third party. The applicant is set up as a branch in accordance with Reserve Bank of India general permission under Master Circular No. 07/2013-14 dated 01.07.2013 of foreign companies in SEZ to undertake service activities. The applicant has entered into an Inter-Company Agreement (hereinafter referred to as the "Agreement") with their Head Office SMSI, USA for providing services to the customers located outside India. SMSI, USA requires the following services performed on behalf of its customers who are located outside India; (i) Mortgage Orientation; (ii) Primary Servicing; (iii) Special Servicing; (iv) Cash Management and (v) Analytics and Reporting. The applicant is providing such services covered by the Agreement dated 22.06.2012. The Agreement is entered only for the purpose of transfer pricing regulation as the branch has no separate legal entity. SMSI, USA has also entered into agreement with customers outside India for providing the services from USA and India branch. SMSI, USA is reimbursing the applicant for the costs

incurred to perform the services. The valuation is done as cost plus 10% mark up to comply with the Transfer Pricing Regulations. The applicant issues commercial invoice to SMSI, USA their Head Office and receives the payment in convertible foreign currency. According to the applicant the services are provided to the customers located outside India and not to SMSI, USA their Head Office and therefore services would qualify as export of services, which is considered as zero-rated supply in terms of Section 16 of the IGST Act, 2017. Hence the applicant requested advance ruling on the following:

Whether supply of services by India Branch of M/s. Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the Inter Company Agreement with M/s. Sutherland Mortgage Services Inc. USA.

4. The Authority for Advance Ruling by Ruling No. KER/32/2019 dated 24.05.2019 held that it is evident that the question raised is whether the supply made by the applicant would qualify as export of service as defined in Section 2(6) of the IGST Act, 2017 and it essentially involves the determination of place of supply which is not included in Section 97 (2) of the CGST Act, 2017 as a question on which advance ruling can be sought. Accordingly, the Authority stated that it is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issues involving determination of 'place of supply'.

5. Aggrieved by the above decision of the Authority that it is lacking jurisdiction to issue ruling on the question raised the applicant filed Writ Petition (Civil) No. 32934 of 2019 before the Hon'ble High Court of Kerala challenging the decision of the Authority on Advance Ruling. The Hon'ble

High Court by Judgment dated 03.02.2020 quashed the decision of the Authority for Advance Ruling and remitted the application to the Authority for Advance Ruling for fresh consideration and decision after affording a reasonable opportunity of being heard to the petitioner. The Hon'ble High Court in the above judgment observed as follows;

“A reading of clauses (a) to (g) of sub-section (2) of Section 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 Section 97 and all those clauses other than clause (e) thereof, are in specific terms. Whereas clause (e) of sub-section (2) of Section 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), i.e. the clauses other than clause (e), are in specific “pigeon holes” the provision as per clause (e) of sub-section (2) of Section 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 services 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 Section 97(2) of the CGST Act, which deals with issue of determination of liability to pay tax on any goods or services or both.

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 Section 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 above said Acts.

In the instant case, it is true that the issue relating to determination of place of supply as afore stated is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 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 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. 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 Section 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 above said view taken by the Advance Ruling Authority is legally wrong and faulty and is liable to be quashed and accordingly declared and ordered.”

**PERSONAL HEARING:**

6. In compliance of the direction of the Hon'ble High Court as detailed above the Authority for Advance Ruling granted opportunity of hearing to the Applicant on 28.10.2020 by virtual mode. S/Shri. K.Sivarajan, Debasis Nayak and Smt Nisha Menon, Pricewater House attended the hearing on behalf the applicant. They invited attention to the written submissions made along with the application and also submitted additional submissions. They also made a detailed presentation emphasizing and elaborating the various grounds relying on case laws in support of their contention that the actual recipient of the services rendered by them are the overseas customers and hence the service rendered by them satisfies all the conditions prescribed in Section 2 (6) of the IGST Act, 2017 and accordingly qualify as export of services and consequently would be a zero rated supply in terms of Section 16<sup>2</sup>(2) of the IGST Act, 2017. During the personal hearing they primarily relied on the Judgment of the Hon'ble High Court of Mumbai in Tech

Mahindra Limited Vs CCE, Pune – III reported in 2014 (36) S.T.R. 241 (Mumbai HC) and also produced a flow chart comparing the flow of services in the case of Tech Mahindra Ltd and in their case in support of their contention that the overseas customers of SMSI, USA are the recipient of the services rendered by them.

7. In the written submission made along with the application and the additional written submission made at the time of personal hearing and in the course of personal hearing on 28.10.2020 they stated as follows;

7.1. They are the India Branch of SMSI, USA and are providing services to the customers and not merely a cost centre. They had entered in to the Agreement for providing the services to the customers located outside India. The Agreement is entered only for the purpose of transfer pricing regulation as they are not a separate legal entity but only the branch of SMSI, USA. Consequently, SMSI, USA has entered into agreements with the customers outside India for providing the services from USA and India Branch. SMSI, USA is reimbursing them the cost to perform such services. The valuation is done as cost plus 10% mark up to comply with transfer pricing regulations. They issue commercial invoice on SMSI, USA and the amounts are received by them in convertible foreign exchange. They made a diagrammatic presentation showing the flow of the transaction. The flow of the transaction shows that they are providing the services to the customers located outside India and not to Head office and therefore services would qualify as export of service which is considered as zero rated supply in terms of Section 16 of the IGST Act, 2017.

7.2. The term supplier is defined in Section 2 (105) CGST Act, 2017 as follows; “supplier” in relation to any goods or services or both, shall mean the person supplying the goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied”. The contracts for servicing the client are between SMSI, USA and the customers located outside India. SMSI, USA and the applicant are the same legal entity and therefore the supplier in the transaction is the applicant.

7.3. The applicant was established as a branch of SMSI, USA as the mortgage law of USA prevented outsourcing of work to separate legal entity. Therefore SMSI, USA has set up a branch office in India and provides services to the customers in USA from the branch office in India. Section 2 (71) of the CGST Act, 2017 defines the term “location of supplier” as follows;

*“(71) “location of the supplier of services” means,—*

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and*
- (d) in absence of such places, the location of the usual place of residence of the supplier.”*



The perusal of the above definition makes it clear that the location of the supplier is the place for which registration has been obtained. In their case the contract is entered by the SMSI, USA with the customers and the service is executed by the Indian branch; i.e; the applicant. Further, even if it is held that the service is provided from multiple locations; namely USA and India the establishment most directly concerned is the Indian branch location. Therefore, the location of the supplier in this transaction is the location of the applicant.

7.4. The recipient of the service rendered by them is the customer of SMSI, USA and not SMSI, USA itself. The applicant was established as the mortgage laws of USA prevented outsourcing of work to separate legal entity. Therefore, SMSI, USA set up a branch office in India and provided service from India. Therefore, they render service to their customers located in USA. Section 2 (93) of the CGST Act, 2017 defines the recipient of supply of goods or services or both to mean, in case where consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration and in case where no consideration is payable for the supply of a service, the person to whom the services are rendered.

7.5. The applicant has provided the services directly to the customers in USA and not to Head office located in USA. The Scope of Work (SOW) between SMSI, USA and the customers in USA specifically provide that the India branch office is the service provider. The agreements were produced as annexure to the application and referring to pages 55 and 56 of the paper book, the relevant extract of the SOW of one customer was reproduced as follows;

“Staffing and facilities: Customer acknowledges that vendor (SMSI Inc) personnel performing the Conventional Mortgage Loan Underwriting or Compliance Underwriting services or Independent Valuation Review may be performed by the vendor personnel located in Vendor’s secure off-shore facility located in India unless specifically instructed otherwise by AFOI or AFOI customers.”

Further the applicant quoted the relevant extracts of the contracts between SMSI, USA and the customers in support of their contention that the services are provided to the customers of SMSI, USA at USA as follows;

Particulars of	Relevant Clause
SOW	
Freedom Mortgage Corporation and Sutherland Mortgage Services Inc	The services will be provided from Sutherland’s Mortgage facility located in Houston TX and in India. Services may be provided from an alternate location as agreed by both parties in writing. (Reference to Pg No. 32 of the Paper Book)
DHI Mortgage Company Ltd and Sutherland Mortgage Services Inc	The services will be provided from Sutherland’s Mortgage facilities located in Houston TX, Clark, Philippines and Chennai, India. Services may be provided from an alternate location as agreed by both parties in writing. (Reference to Pg No. 49 of the Paper Book)
Flagstar Bank and Sutherland Mortgage Services Inc	The services will be provided from Sutherland’s Mortgage facilities as well as personnel working from their homes. Services may be provided from an alternate location as agreed by both parties in writing. (Reference to Pg No. 39 of the Paper Book)
Loan Protector Insurance Services and Sutherland Mortgage Services Inc	Services will be provided out of a Sutherland facility located in India

7.6. The SOW between the SMSI, USA and the customers specifically provides the Indian branch office locations as service providing locations. The invoice raised by SMSI, USA to the customers clearly show the bifurcation of the services provided by the on-site location (head office in USA) and the off-site location (SMSI India). This is further supported by the relevant clause mentioned in the scope of work entered between customers and SMSI, USA which talks about fee structure for employees working from On-shore location (USA) and Off-shore location. The relevant clause of the scope of work is reproduced as follows;

*"5. Fees for services: The fees for services itemized below are charged based on the number of full time employees (FTE) assigned by vendor to perform services for and AFOI Customers. All management, supervision, training and quality control oversight are included in the fees itemized below; Services provided in Vendor's offices (In-house services); FTE located within the U.S (On-shore FTE) per diem fee: \$695; FTE located outside U.S (Off-shore FTE) per diem fee \$150."*

The perusal of the SOW and the corresponding invoices make it clear that the services are actually provided from the SMSI India Branch to the customers in USA and not to the head office located in USA.

7.7. The applicant directly work on the Loan Originating System and processing system of the customer located outside India for providing the mortgage loan underwriting or compliance underwriting services or Insurance underwriting services. The same is evidenced from the fact that it is expressly mentioned in the SOW entered by SMSI, USA and Arch Fulfillment Operations Inc (AFOI). The relevant paragraph is reproduced below;

*“General Information: Vendor will provide necessary computer, software and telephone hardware necessary to perform the services set forth in the Statement of Work. Mortgage Insurance Underwriting Services will be performed in the AFOI affiliates processing system via a secure VPN, site to site VPN or other secured connections selected by AFOI in its sole discretion.”*

The same fact is also corroborated from the other customer SOW between the SMSI, USA and Flagstar Bank. The relevant portion is reproduced below;

*“Primary systems to be used: The Underwriting duties will be completed in Flagstar’s Loan Originating System. All systems, access, licenses and applications required to deliver services to be provided by the Flagstar. Any required IVR and data connectivity shall be provided by the Sutherland.”*

From the perusal of the above sample SOW it is clear that services are not provided by the applicant to SMSI, USA but provided directly to the customers located in USA.

7.8. The services provided by the applicant cannot be reviewed by SMSI, USA before the same is delivered to the customers. The services are directly delivered to the customers by the applicant without any consolidation at SMSI, USA. The perusal of the definition of recipient makes it very clear that recipient is one who is liable to pay the consideration. In their case the customer of SMSI are legally entitled to receive the service from SMSI and is obliged to make the payment to SMSI, which SMSI, USA invoices for the services. SMSI, USA reimburses the applicant the cost to perform such services. The valuation is done at cost plus 10% mark up to comply with

the Indian transfer pricing regulation. Therefore, although the invoices are raised by SMSI, USA and remittances for the same are also received from SMSI, USA the actual rendering of the services happens directly to the customers located in USA. The consideration in foreign exchange is received by the applicant based on the intra office invoice as per inter – company agreement. It is well settled principle in the erstwhile law and also GST law that service receiver is the person who is liable to make the payment irrespective of the fact that whether or not he actually makes the payment or someone else makes the payment on his behalf. They also produced a diagrammatic representation of the flow of services to show that the services are actually provided to the customers located in USA and not to the Head office.

7.9. The meaning of the term “merely establishment” in clause (v) of the definition of export of service in Section 2 (6) of the IGST Act, 2017 has no relevance in the case of the applicant. Clause (v) of Section 2 (6) of the IGST Act, 2017 reads as follows;

*“v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of Section 8”.*

In their case the recipient of service is the customers of SMSI and not SMSI, USA and the applicant and the customers are not merely establishment of a distinct person. Notwithstanding the fact that the condition under clause v is satisfied in their case they wish to reiterate that there are various scenarios where this word “merely” may be relevant and clause v may be triggered. They have provided two such scenarios in Page 15 and 16 of the Paper Book where the word “merely” may probably have

relevance. In their case the supplier of service and the recipient of service, the end customers are not merely establishments of distinct person.

7.10. They have satisfied all the conditions of export of service namely; (a) the supplier of service is located in India; i.e; SMSI India Branch is located in India; (b) The recipient of service is located outside India; i.e; customers of SMSI, USA; (c) The place of supply of service is outside India; i.e; service provider is in India and the services are received in USA; (d) The Indian Branch has received the money in foreign exchange; i.e; SMSI India Branch has received the amount in foreign exchange; (e) the supplier of service and the recipients of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8; i.e; services are directly rendered to the customer of SMSI, USA and not to SMSI, USA. As all the conditions of export of service are satisfied the service rendered by them are zero rated in terms of Section 16 (2) of the IGST Act, 2017.

7.11. They relied on the Judgment of the Hon'ble High Court of Mumbai in the case of Tech Mahindra Ltd Vs CCE reported in 2014 (36) STR 241 (Bom) wherein the question before the Hon'ble High Court was whether the service to the overseas customers with regard to on-site work (services provided by foreign subsidiary/ branches to overseas customers) will be treated as export of service from India. The Court held that the service provided from the onshore location to the customer is not export of service although; (1) the contract with the customer was executed by the Head office; (2) invoice was issued by the head office for both onshore and offshore services and (3) there was no privity of contract between the customer and the subsidiary / branches of the head office. The Court arrived at this decision by relying on the actual flow of service even in case

there is no privity of contract between the parties. The actual flow of service in their case is between SMSI India Branch and the customers outside India. The agreement by the customer with SMSI, USA as a legal entity and such agreement clearly specifies India branch as one of the service providing locations and therefore there is a clear privity of contract established between the Indian branch and the customers. It is a well settled principle that intention of the government is not to export taxes. Export of services being a beneficial scheme should be given liberal interpretation.

#### **DISCUSSION AND CONCLUSION:**

8. We have gone through the application; the judgment of the Hon'ble High Court of Kerala; the written submissions; the documents produced and the detailed submissions made by the authorized representative of the applicant during personal hearing. The question raised in the application is whether the supply of services by India branch of M/s Sutherland Mortgage Services Inc, USA to the customers located outside India shall be liable to GST. To answer this question it is necessary to decide whether the services rendered by the applicant as per the Agreement constitute export of services as defined in Section 2 (6) of the IGST Act, 2017.

9. Section 2 (6) of the IGST Act, 2017 defines export of service 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; 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.”*

10. It is an admitted and undisputed fact that the services rendered by the applicant as per the Agreement satisfies the conditions prescribed in clauses (i) to (iv) of the definition of export of service in Section 2 (6) of the IGST Act, 2017. Therefore, the only issue that is to be decided to answer the question raised by the applicant is whether the services rendered by the applicant as per the Agreement satisfy the condition at clause (v) *ibid*. To decide the issue it is necessary to determine the recipient of the service provided by the applicant. To determine the recipient of service it is necessary to analyse the terms of the Agreement with reference to the definition of recipient of service in the CGST Act, 2017 and the explanations to Section 8 of the IGST Act, 2017.

11. Section 2 (93) of the CGST Act 2017 defines recipient of supply of service as follows;

*“(93) “recipient” of supply of goods or services or both, means—*

*(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*

*(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*

*(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,*



*and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.”*

Explanation 1 and 2 of Section 8 of the IGST Act, 2017 reads as follows;

Explanation 1.—For the purposes of this Act, where a person has,— (i) an establishment in India and any other establishment outside India; (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

12. Thus it can be seen that the above explanations to Section 8 of the IGST Act, 2017 creates a legal fiction that the establishment of a person in India and any other establishment of the same person outside India are two separate legal persons for the purpose of goods and services tax law. In view of the legal fiction created by the explanations to Section 8 of the IGST Act, 2017 even though the applicant and SMSI, USA cannot be treated as distinct persons under the law of contracts or in commercial or accounting parlance they are separate legal persons / distinct persons as far as the applicability of goods and services tax law is concerned. Therefore, the recipient of services as per the agreement has to be determined in the light of the legal fiction as above.

13. The relevant clauses of the Agreement dated 22.06.2012 are reproduced below;

“Whereas, Company is having branches of Service Provider and

Whereas, Company has its branches in India at below addresses as required by SAFE Act and in pursuance of regulations of Reserve Bank of India;

Whereas, Company needs certain services performed on its behalf and Service Provider is willing to provide those certain services to Company on the terms and conditions set forth herein; and

Whereas, in exchange for the performance of such services, Company is willing to pay Service Provider for such services and to reimburse Service Provider for the cost to perform such Services as specified in this agreement; and

Whereas, the pricing and cost reimbursement amounts have been determined by an independent third party to be reasonable in the circumstances to the reasonable satisfaction of the parties hereto;

Now, therefore the parties hereby agree as follows;

## **1. Definitions:**

1.11. “Services” means tasks that Service Provider agrees to provide to Company as described in a Service Statement.

1.15. “Service Statement” means a written description of services that Service Provider will provide Company, together with a listing of fees to be paid and costs to be reimbursed in exchange for performance of the applicable services.

## **2. Services:**

2.1. Services Generally: Pursuant to separate Service Statements attached hereto and made a part hereof, Service Provider shall provide to Company and Company shall purchase from Service Provider the Services described in such Service Statements. Billing and provision of Services shall be as directed in this Agreement and the applicable Service Statement. In the event of conflict or inconsistency between a Service Statement and this Agreement, the Service Statement will control.

**5. Fees and Cost Reimbursement:**

5.1. Fees; Review: In consideration of Service Provider providing the Services, Company shall pay to the Service Provider the fees set forth in the applicable Service Statements. The fees may be adjusted from time to time by mutual written agreement without limiting the foregoing. Fees based on cost plus mark up basis are subject to review from time to time for updating of applicable costs and an updating of the appropriate mark -up above costs to be paid to Service Provider. These changes to the Fees are subject to mutual agreement of the parties, provided that each party agrees to accept the reasonable calculation of any third party chosen by both parties to calculate fair and reasonable market rates for mark -ups for the Services at issue in the review. Such mark-ups are subject to change from time to time as mutually agreed. All fees and cost reimbursements due hereunder shall be paid in U.S currency unless otherwise specified in a Service Statement.

5.2. Payment: Service Provider shall invoice the Company for Services performed as mutually agreed but in no event less than once per year, each such invoice shall be due and payable as set forth in the Invoice. Any sum due to Service Provider pursuant to this Agreement for which a time of

payment is not otherwise specified shall be due and payable thirty days after receipt by Company of an invoice.”

14. On a plain reading of the above clauses of the Agreement it is evident that the services are provided by the applicant to SMSI, USA and not to the customers of SMSI, USA and the consideration for the services rendered is liable to be paid to the applicant by SMSI, USA. The applicant has submitted three flow charts showing different scenarios of the flow of services claiming that the actual flow of service is directly from them to the overseas customers of SMSI, USA. They have also claimed that the customer are legally entitled to receive the services from SMSI and is obliged to make payment to SMSI and the applicant being the branch of SMSI is providing services directly to the customers. The contention of the applicant is not sustainable in view of the deeming provision as discussed above wherein the applicant and SMSI, USA are deemed to be separate and distinct legal persons for the purpose of goods and services tax law and hence contract entered by the customers with SMSI, USA and the payment made by them to SMSI, USA cannot be considered as contract executed or payment made to the applicant. Even if it is assumed that the services are provided directly to the customers of SMSI, USA by the applicant, the applicant can only be considered as providing the services on behalf of SMSI, USA to the overseas customers. Thus, in any view of the matter the recipient of the services rendered by the applicant as per the Agreement is SMSI, USA the Head office of the applicant.

15. The applicant has placed reliance on the judgment of the Hon'ble High Court of Bombay in the case of Tech Mahindra Ltd Vs CCE, Pune III reported in 2014 (36) S.T.R. 241(Bom) in support of their contention that

the actual flow of services is relevant and in their case the actual flow of services is to the customers of SMSI, USA. In view of the discussion and finding above on the basis of the clauses in the Agreement that the recipient of services of the applicant is SMSI, USA the judgment is distinguishable on facts and hence not applicable.

16. On the basis of the discussion above, it is concluded that the recipient of services of the applicant is SMSI, USA the Head office of the applicant and hence a distinct person in accordance with Explanation I in Section 8 of the IGST Act, 2017. Hence the condition at sub-clause (v) of clause (6) of Section 2 of the IGST Act, 2017 defining export of service that 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 is not satisfied and accordingly the service provided by the applicant do not constitute export of service as defined in Section 2 (6) of the IGST Act, 2017 and consequently the applicant is liable to pay IGST. However, it is seen that entry at Sl No. 10F of Notification No. 09/2017 Integrated Tax (Rate) dated 28.06.2017 as inserted by Notification No. 15/2018 Integrated Tax (Rate) dated 26.07.2018 reads as follows;

10F - Chapter 99 - Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the Integrated Goods and Services Tax Act, 2017 - Nil - Provided the place of supply of the service is outside India in accordance with section 13 of Integrated Goods and Services Tax Act, 2017.

In view of the above entry in the exemption notification the services provided by the applicant is exempted from IGST from 27.07.2018 onwards.

17. Accordingly the following ruling is issued.

**RULING**


1. Whether supply of services by India Branch of M/s. Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the Inter Company Agreement with M/s. Sutherland Mortgage Services Inc. USA.

The supply of services by the applicant as per the Inter-Company Agreement with M/s Sutherland Mortgage Services Inc, USA is liable to GST for the period from 01.07.2017 to 26.07.2018 and thereafter is exempted from GST as per entry at Sl No. 10F of Notification No. 09/2017 – Integrated Tax (Rate) dated 28.06.2017 as inserted by Notification No. 15/2018 – Integrated Tax (Rate) dated 26.07.2018.



SIVAPRASAD S

JOINT COMMISSIONER OF  
CENTRAL TAX  
MEMBER



SENIL A/K RAJAN

ADDITIONAL COMMISSIONER  
OF STATE TAX  
MEMBER

To,

M/s Sutherland Mortgage Service Inc,  
5<sup>th</sup> Floor, 1, Technopolis, Cochin Special Economic Zone,  
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Copy to;

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