

GIB/KR/Infinera India/12.09.2019/AAR-314**Advance Ruling Category :** Levy**State :** Karnataka**Order No.:** GIB/KR/Infinera India/12.09.2019/AAR-314**Name of Entry :**
Infinera India Ltd.**Date :** 12-09-2019**Breif Issue :****Facts & Issue of The Case:**

Infinera India Private Limited hereinafter referred as “Applicant” is a private limited company and is registered under the Goods and Services Act, 2017. Appellant is a 100% Export Oriented Unit under the STPI scheme and is a wholly owned subsidiary of Infinera Corporation, USA. Appellant is predominantly engaged in software development services for the products developed by Infinera Corporation and also provides pre-sale and marketing services for the optical networking equipment developed by Infinera Corporation. The Appellant and Infinera USA have entered into a “Pre-sale and Marketing Services Agreement” whereby the scope of work involves:

- Assist Infinera USA through the coordination of sales promotion and advertising for its products in India
- Conduct market research and keep Infinera USA advised and informed regarding all matters within India, which may be of reasonable business interest or concern to India
- Provide informational, educational and service programs in India, as may be requested by Infinera USA from time to time.

The applicant has sought advance ruling in respect of the following question:

Whether the activities carried out in India by the applicant would render the applicant to qualify as an “intermediary” as defined under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (hereinafter “IGST Act, 2017”) and consequently be subject to the levy of GST?

Regarding the issues before the authority, the applicant argues that the activities carried out by the applicant do not qualify to be termed as “intermediary services”. The intermediary is defined under Section 2(13) of the IGST Act as under

“2(13) “intermediary” means a broker, an agent or any other person, by whatever name called, who

arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

Decision of Advance Ruling Authority :**Decision**

- In Para 15.2 and 15.3 of the agreement between Applicant and Infinera USA, it is stated by the applicant that the pre-sales marketing agreement is with respect to optical networking equipment's.
- The scope of work, as narrated in the earlier para, requires that the applicant will engage himself in carrying out promotional activities in the taxable territory. In order to undertake these activities, it is necessary for the applicant to first study the market conditions, identify the potential customers, meet them, convey the unique features and characteristics of the products of Infinera highlighting their advantages and usefulness etc.
- This creates a visibility about Infinera in the market. The prospective customers thereafter contact Infinera and finalise the purchase. The sale is then made directly between Infinera and the customers.
- The applicant therefore did not indulge in the main supply of goods. However, it is an admitted fact that the applicant acted as the conduit, the bridge, the go-getter who created visibility for Infinera and thus facilitated or enabled the sale of their goods to the customers in the taxable territory. The actions of the applicant, therefore, squarely fit into the definition of an intermediary.
- The activities carried out in India by the applicant so far as those activities mentioned in the “Pre-sale and Marketing Services Agreement” would render the applicant to qualify as an “intermediary” as defined under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 and consequently be subject to the levy of GST.

The AAR held that the activities carried out in India by the applicant in terms of the “Pre-sale and Marketing Services Agreement” qualifies the applicant as an “Intermediary” as defined under Section 2(13) of the IGST Act, 2017 and consequently be subject to the levy of GST.

Aggrieved by the order of AAR, the appellant further appealed to the Appellant Authority on Advance Rulings (AAAR)