

**GIB/KR/Infinera India/20.01.2020/AAAR-35****Appellate Advance Ruling Category :** Levy**State :** Karnataka**Order No.:** GIB/KR/Infinera India/20.01.2020/AAAR-35**Name of Entry :**

Infinera India Ltd.

**Date :** 20-01-2020**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?*

*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)*

**Decision of Advance Ruling Authority :****Decision:**

- The argument of the Appellant that the pre-sales promotion and marketing services are supplied to the Principal on their own account and hence they fall within the exclusion clause of the definition of intermediary is not a correct interpretation of the law.
- The language of the exclusion clause is such that it is applicable to those persons who supply such goods or services on their own account.
- If a person either ‘facilitates’ or alternately ‘arranges’ any supply of goods or services between two or more persons, and does not supply such goods or services on his own account, he would be regarded as an ‘intermediary’.
- Here, the Appellant is clearly facilitating the supply of the products of Infinera US (their overseas client) directly to the client’s customers in the territory of India and is not supplying such goods on his own account.
- Therefore, the Appellant does not fall within the ambit of the exclusion.

In view of the foregoing discussions, the AAAR upheld the decision of the AAR that the pre-sale and marketing service provided by the Appellant of the products of the overseas client — Infinera US, is in the nature of facilitating the supply of the products of the overseas client and is appropriately classified as an ‘intermediary service’ as defined under Section 2(13) of the IGST Act.