

GIB/KR/SUTHERLAND/03-02-2020/HC-77**High Court Category :** Export**State :** Kerala**Order No.:** GIB/KR/SUTHERLAND/03-02-2020/HC-77**Name of Entry :**
SUTHERLAND MORTGAGE SERVICES INC**Date :** 03-02-2020**Breif Issue :****Issue & Fact of the Case:**

Issue a writ of certiorari or any other appropriate writ, order or direction as this Hon'ble Court deems fit and proper in the circumstances of the case, calling for the records leading to the issue of Exhibit P-2 Order and after scrutinizing the same, to strike down and quash the same and to hold that in the given set of facts available before the AAR, the transaction in question would not attract GST since the subject transaction would qualify for "Export of Services" in terms of Section 2(6) of IGST Act, 2017.

Issue such other appropriate writ, direction or order as deemed fit by this Honourable court, considering the facts and circumstances of the case, in the interest of justice."

Whether supply of services by India Branch of the petitioner to the customers located outside India shall be liable to GST in the light of the intra-company agreement entered into by the Indian branch with its principal incorporated in USA - Petition challenging refusal of Authority of Advance Ruling to entertain the question as the same is intrinsically related to "determination of place of supply" and not subject matter of Advance Ruling as envisaged in Section 97(2) - Appealability of Order passed by Authority of Advance Ruling under of Section 98(2) of the CGST Act

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

The foreign entities which come 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 true that the issue relating to 'determination of place supply' 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 fulfils 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 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. The view taken by the Advance Ruling Authority is legally wrong and faulty and is liable to be quashed - Consequently, it is ordered that the said rejection order passed by the AAR will stand quashed and petitioner’s application will stand remitted to the Advance Ruling Authority for fresh consideration and decision in accordance with law - the Writ Petition