

**AUTHORITY FOR ADVANCE RULINGS**  
**(Central Excise, Customs and Service Tax)**  
**Hotel Samrat, 4<sup>th</sup> Floor, Kautilya Marg, Chanakyapuri**  
**New Delhi**

**Present:**

**Justice V.S. Sirpurkar (Chairman)**  
**Shri S.S.Rana (Member)**  
**Shri R.S.Shukla (Member)**

The 4th day of March, 2016

Ruling No. AAR/ST/ 07/2016  
in  
Application No. AAR/44/ST/14 /2014

Name & address of the applicant : M/s Universal Services India Pvt. Ltd.,  
003, Tower-4A, DLF Corporate Park,  
M.G.Road,Guragon-122002

Commissioners concerned : The Commissioner of Service Tax,  
Delhi-IV, Plot No. 36 & 37, Sector-32  
Opp. Madanta Hospital,  
Gurgaon-122001

Present for the applicant : Shri S.Thirumalai, Advocate,

Present for the Department : Shri Govind Krishna Dixit (AR)

**Ruling**

Universal Services India Private Limited (hereinafter also referred to as the applicant) proposes to enter into a 'Services Agreement' with Wild West Domains, LLC, (hereinafter referred to as WWD US) located in Arizona, USA and incorporated in Delaware, USA. WWD US is domain name registrar and provides other web services to customers across the world. Vide the proposed services agreement, the applicant intends to provide payment processing services to WWD US, wherein it proposes to assist the customers of WWD US located in India with the processing of payments to WWD US. Applicant states that WWD US will provide its services and products to customers in India through its website. In respect of such services, the customers would make the payment to WWD US online. For making such payment, in case the

customers use an international credit card, they will be able to make the payment directly to WWD US in US Dollars. Customers will also be able to pay for the services by using their Indian credit cards for bank payment facilities and make payments in Indian Rupees ('INR'). To enable customers using Indian credit card to pay for the services in INR, WWD US desires the applicant to provide payment processing facilities in India and collect money from the customers of WWD US in India and remit the same to WWD US. As far as provision for the payment collection services to WWD US is concerned, the applicant shall outsource the said activity to a third party service provider in India, who would provide necessary payment collection gateway facility to the customers, who may wish to effect payment in INR by using their Indian credit cards. Towards this, the applicant proposes to open a separate bank account in India wherein the payment collection gateway company appointed by the applicant will deposit the money so collected from the customers of WWD US. Further, it is also contemplated that the applicant may allow the customers to directly deposit money in its bank account using their net banking facility. Thereafter, all such collections will be transmitted by the applicant to WWD US on actual basis i.e. without any mark-up. In consideration for the above-mentioned services, the applicant shall charge a fee equal to the operating costs incurred by the applicant plus a mark-up of 13% on such costs. It is proposed that the applicant would receive such fee from WWD US for services provided by it in US Dollars. Applicant submits that WWD US would be the only customer of the applicant. The applicant would not provide any services for or on behalf of WWD US in India or outside India. The applicant is not authorized to enter into any contract or arrangement on behalf of WWD US or which bind it in any manner whatsoever. WWD US will directly contact and provide services to customers in India. The applicant will not be engaged in arranging or facilitation of services of WWD US to customers in India. Furthermore, the applicant will also not be engaged in any manner to arrange or facilitate the provision of any service by any third party service provider to WWD US. The only service to be performed by the applicant would be as stipulated in the draft service agreement.

2. WWD US, through its website 'http://who.wildwestdomains.com/' is engaged in the business of providing name registration, web hosting, designing and other services. The nature of services provided by WWD US is outlined below;

a. Domain name registration and transfer services: WWD US registers and transfers both generic top level domains, including the prominent domains such as .com, .net, .org, and .info, as well as country code top level domains including, .us,.ca,.mx,.fr,.it,.de and.es. Any user desirous of obtaining any particular domain can access a website of WWD US and place a request for the same. Upon availability, WWD US registers the desired domain name for the customer in his name. The customer enters into a contract for registration of the domain in its own name directly with WWD US and also pays for such services through the channels as provided by WWD US.

b. Website hosting and e-mail: WWD US provides web hosting services which allow its users to develop their own websites / webpages by using the development tools and applications which are available online on WWD's website. WWD US hosts the website of its users on its servers/dedicated servers located outside India. Such websites are accessible from the servers by anyone on a 24x7 basis. WWD US also offers to install and configure supporting applications for such websites on its servers.

c. Designing services: WWD US assists its users in creating various designs for website header, website content, website logo, business card, letter head etc., so that the users can build their own website. The relevant tools and applications required for the above services are available on a WWD US website.

d. Sale of on-demand products: WWD US also provides its domain users with email, calendar and other standard services with limited features. Additional features (like multiple email ids', additional space, synchronization etc.) are also available to the users for a service fee, which varies based on the service level requested by the users. WWD US also provides Secure Sockets Layer ('SSL') certification services, which ensures that the message to be sent is properly encrypted and reaches the intended recipient.

3. In light of the aforesaid submissions on facts, the applicant seeks to obtain a ruling with regard to the following questions of law;

**Question No.1:** *Whether, in the facts and circumstances of the case, the place of provision of payment processing service by the applicant, is outside India in terms of Rule 3 of Place of Provision of Services Rules, 2012 (hereinafter referred to as POPS)?*

4. Applicant inter-alia submits that they propose to provide the payment processing services to WWD US; that such services would enable the customers of WWD US in India to have a payment solution in respect of the services which such customers procure from WWD US; that the service of payment processing proposed to be provided by the applicant to WWD US would be the main service of the applicant and would be provided by the applicant on its own account; that applicant would also arrange a third party payment gateway service provider in India; that such services of third party payment gateway service provider would form an input to the main service provided by the applicant on its own account to WWD US. Applicant further submits that they would in no way be involved in arranging or facilitating the provision of any service by WWD US to its customers in India; that customers in India would directly purchase the services from WWD US website and applicant would play no role in that transaction between the customers and WWD US; that the service proposed to be provided by the applicant to WWD US will be clearly separate services provided on a principal to principal basis. Applicant submits that the taxability of the proposed services is governed by Rule 3 of the POPS, in terms of which the place of provision of services proposed to be provided by the applicant would be the location of the recipient of service. Since the intended recipient of the service (i.e. WWD US) is located outside India, the place of provision of the proposed service would be considered as outside India.

5. Revenue submits that applicant intends to provide services relating to collection of money from the customer on behalf of WWD, US. Thus there is involvement of the applicant with WWD, US as well as customers in India. Therefore, the services so intended to be provided appear to be covered under “Intermediary Services”, which falls under Rule 9 of POPS, wherein the provision of service in such cases is location of service provider i.e. India.

6. It is observed that on the subject issue, applicant submits that the place of provision of service should be the location of recipient of service i.e. U.S.A. as per Rule 3 of POPS, whereas Revenue submits the place of provision of service as location of service provider i.e. India under Rule 9(c) of said Rules. Relevant Rules of POPS are extracted as under:

*Rule 3 Place of provision generally*

*The place of provision of a service shall be the location of the recipient of service:*

*PROVIDED that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

*Rule 9 Place of provision of specified services*

*The place of provision of following services shall be the location of the service provider:-*

- (a) *Services provided by a banking company, or a financial institution , or a non-banking financial company, to account holders;*
- (b) *Online information and database access or retrieval services;*
- (c) *Intermediary services;*
- (d) *Service consisting of hiring of all means of transport other than, \_*
  - (i) *Aircrafts, and*
  - (ii) *Vessels except yachts,*  
*Up-to a period of one month*

*Rule 2 Definitions*

*In these rules, unless the context otherwise requires,-*

- (f) *“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account.*

7. It is observed that WWD US is engaged in the business of providing domain name registration, web hosting, designing services etc to the customers in India. For

such services, customers would make payment to WWD US. Further, the customers in India shall be making payment to WWD US for these services i.e., domain name registration, transfer services, web hosting services, designing services etc., provided directly with the help of International Credit Card or depositing the amount in the bank account opened by the applicant for this purpose or the amount would be collected from the customers in India by the third party entrusted with this work by the applicant and to be deposited in applicant's account opened for this purpose. In all these situations i.e. whether the payment is made by the Indian customers for the services provided by WWD US, directly or through the applicant, applicant would charge a fee equal to the operating cost incurred by the applicant plus mark up of 13% on such costs. Therefore, it transpires that the main service provided by WWD US to the customers in India is domain name registration, web hosting services etc. Applicant is not at all concerned with respect to this service. However, service provided by the applicant to WWD US is processing of payments, which is the main service. Further, applicant is providing this service to WWD US on his own account for a fee equal to the operating costs incurred by the applicant plus mark-up of 13% on such costs. Therefore it cannot be inferred that the applicant would be providing payment processing service to the Indian Customer, for the service rendered by WWD US to them. If that was the case, applicant would not receive any fees from WWD US in respect of payments by the Indian Customer remitted directly through International Credit Card to their service provider i.e., WWD US. But that is not the case. Further, the definition of "intermediary" as envisaged under Rule 2 (f) of POPS does not include a person who provides the main service on his own account. In the present case, applicant is providing main service i.e. "business support services" to WWD US and on his own account. Therefore, applicant is not an "intermediary" and the service provided by him is not intermediary service.

8. In view of above, place of provision of service would be location of recipient of service i.e. WWD US under Rule 3 of POPS. Therefore, we rule as under;

*In the facts and circumstances of the case, the place of provision of payment processing service by the applicant, is outside India in terms of Rule 3 of Place of Provision of Services Rules, 2012.*

**Question No.2:** *Whether in the facts and circumstances and in the light of the answers to question 1 above, the services to be provided by the Applicant to WWD US that fall to be classified under Rule 3 of the Place of Provision of Services Rules, 2012 qualify as export of taxable services in terms of Rule 6A of the Service Tax Rules, 1994 (inserted vide Notification No. 36/2012-S.T. dated 20.6.2012) and therefore remain non-taxable for purpose of payment of service tax under the Finance Act?*

9. Applicant submits that in terms of Rule 6A of Service Tax Rules, 1994, service provided by the applicant to WWD US i.e. processing of payment, will qualify as export of taxable services.

Rule 6 A (1) of Service Tax Rules, 1994 read as under:

*RULE 6A Export of services.- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-*

(a) *the provider of service is located in the taxable territory,*

(b) *the recipient of service is located outside India,*

*the service is not a service specified in the Section 66 D of the Act,*

(c) *the place of provision of the service is outside India,*

(d) *the payment for such service has been received by the provider of service in convertible foreign exchange, and*

(e) *the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act.*

10. In respect of Question 1 above, we held that the place of provision of service would be outside India. It is observed that in this case, provider of service i.e. the applicant, is located in India, which is the taxable territory; recipient i.e. WWD US is located in USA; the service to be provided by the applicant i.e. business support services, is not specified under Section 66 D i.e. Negative List Services; applicant would receive payment for said services in convertible foreign exchange and applicant and WWD US are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Finance Act, 1994. As all the ingredients enlisted under Rule 6 A ibid are satisfied, said service will qualify as export of taxable service. In view of above, we rule as under;

*In the facts and circumstances, the services to be provided by the applicant to WWD US that fall to be classified under Rule 3 of the Place of Provision of Services Rules, 2012 qualify as export of taxable services in terms of Rule 6A of the Service Tax Rules, 1994 (inserted vide Notification No. 36/2012-S.T. dated 20.6.2012) and therefore remain non-taxable for purpose of payment of service tax under the Finance Act.*

**Question No. 3:** *Whether in the facts and circumstances of the case, by providing the payment processing services to WWD US, the applicant is providing any service to the customers of WWD US in India?*

11. Applicant inter-alia submits that he would be hired by WWD US to provide payment processing services; that applicant would be engaged in the provision of business support services to its own customer i.e. WWD US and not to the customers of WWD US in India. Under no circumstance, the applicant will provide any support to the customer of WWD US in India; that applicant will not be remunerated for its services by any customer in India; that the remuneration in respect of applicant's service will also be provided by WWD US only; that from the customer's perspective, the payment collection support is provided to the customers by WWD US only; that the customers will, for all purposes, deal directly with WWD US and not with the applicant in any manner. Applicant also relied upon Service Tax: An Education Guide dated 20<sup>th</sup> June, 2012 issued by Ministry of Finance, Department of Revenue, Tax Research Unit ('TRU'), wherein a service receiver is defined as under:

*"Normally, the person who is legally entitled to receive a Service and therefore, obliged to make payment, is the Receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf."*

12. It observed that payment processing services are proposed to be provided by the applicant to WWD US on principal to principal basis. It is the main service i.e. "business support services". Further, applicant is not concerned in respect of services provided by WWD US to Indian Customers, which relates to domain name registration, transfer services, web hosting services, designing services etc., In case, applicant was providing service to Indian Customers, he would have received "consideration" from Indian Customers. Fact is that no remuneration / consideration is received by the applicant

from Indian Customers. Applicant is to only receive from WWD US, a fee equal to the operating cost incurred by the applicant plus mark up of 13% on such costs for payment processing services. It is noticed that applicant is to receive said fees from WWD US, even in respect of Indian Customers, who directly remit service charges to WWD US through International Credit Card, wherein applicant is not in the picture. This fact further shows that the applicant is not providing any service to Indian Customs. In view of above we rule as under;

*In facts and circumstances of the case, by providing the payment processing services to WWD US, the applicant is not providing any service to the customers of WWD US in India.*

**Question No.4:** *In any event, without prejudice to the other questions, whether the service of collection of payments from customers of WWD US in India, is a transaction in money and hence not subject to service tax?*

13. As this point is not pressed by the applicant, same has not been considered.

Sd/-

**(S.S.Rana)**  
**Member(R)**

Sd/-

**(V.S.Sirpurkar)**  
**Chairman**

Sd/-

**(R.S.Shukla)**  
**Member(L)**