

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	Indian Oil Corporation Ltd
Address	2 Indian Oil Bhavan, Gariahat Road South, Dhakuria, Kolkata – 700068
GSTIN	19AAACI1681G1ZM
Case Number	17 of 2018
Date of application	June 21, 2018
Order number and date	17/WBAAR/2018-19 dated 18.09.2018
Applicant's representative heard	Sri Sunil Kumar Gupta, Authorized Representative

1. Indian Oil Corporation Ltd, stated to be in the activity of refining crude petroleum oil into, inter alia, High Speed Diesel (HSD), Motor Spirit (petrol), and Aviation Turbine Fuel (ATF), no tax on supply of which is leviable date under the CGST/WBGST Acts, 2017, (hereinafter collectively referred to as “the GST Act”) is seeking a ruling on whether or not GST paid on the railway freight for transportation of the above goods from the its Haldia Refinery to the its export warehouse at Raxaul can be availed as Input Tax Credit under the GST Act.

Advance Ruling is admissible on this question under Section 97(2)(d) of the GST Act. Indian Oil Corporation Ltd further submits that the question raised in the Application is neither decided by nor pending for decision before any authority under any provisions of the GST Act.

The officer concerned has not objected to admission of the Application.

The Application is, therefore, admitted.

2. Indian Oil Corporation has its Registered Office in Mumbai, and is operating through its various offices, including its depots, terminals, LPG bottling plants, spread across India and are registered under the Goods and Services Tax, 2017, in all the States/Union Territories of India, except in the Union Territory of Lakshwadeep.

Since each unit has separate and independent registration under the GST Act, such units are to be considered as “distinct persons” in terms of Section 25(4) of the GST Act.

The GST registration in the state of West Bengal is 19AAACI1681G1ZM.

For purpose of this Advance Ruling the West Bengal Unit of Indian Oil Corporation, holding GSTIN 19AAACI1681G1ZM, will be considered as the Applicant.

3. The Application states that:

- a. The Applicant exports HSD, ATF and other refined petroleum products to Nepal under the terms and conditions laid down in an agreement dated 27/03/2017 (hereinafter referred to as “the Agreement”) between Indian Oil Corporation and Nepal Oil Corporation Ltd (hereinafter referred to as “NOC”). ATF, Motor Spirit and HSD, sourced from the Applicant's manufacturing unit (refinery) at Haldia in

West Bengal are transported by Rail to the Indian Oil Corporation's warehouse at Raxaul in Bihar.

The supply from Haldia to Raxaul is made in accordance to the procedure laid down in Circular No. 581/18/2001-CX dated 29/06/2001 issued by CBEC. The receiving location at Raxaul provides Haldia Refinery CT-2 for a lump sum quantity. Haldia Refinery prepares ARE-3 on the basis of such CT-2 and sends it along with Original Invoice and Railway Receipt as per Central Excise Rules. On receipt of the goods Raxaul Depot returns the ARE-3 duly signed by the Excise Authorities mentioning details of the quantity actually received. The Applicant states that the said ARE-3 is submitted to Haldia Range Excise Authority as proof of export. In its monthly returns in ER-1 the Haldia Refinery reports them as removal without payment of excise duty (under bond) to export warehouse. Similarly, the export warehouse (Raxaul Depot) submits ER-1 along with account/statement of export in Form Annexure-19. The bond register is maintained at the export warehouse.

- b. The goods so transported to Raxaul Depot are excluded from turnover under the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"), being claimed in West Bengal under Section 6A of the CST Act as disposal otherwise than by way of sale.
 - c. Under the GST Act the Applicant has reported the above transactions as inter-state exempt supplies from Indian Oil Corporation's West Bengal Unit, and export of Indian Oil Corporation's Bihar Unit.
 - d. The Applicant has been paying GST on the input service of Railway Freight for the above transportation. As the freight is charged for booking and transportation from West Bengal, it is billed on the Applicant, as the place of supply of the input service is West Bengal.
4. The Application argues that the Applicant is eligible to claim credit of such GST paid on input services since the transportation from Haldia Refinery to Raxaul Depot is occasioned by an agreement for export of goods to Nepal. According to the Applicant, the goods are transferred to the export warehouse at Raxaul in terms of an export agreement with no scope of diversion for home consumption. It is export within the meaning of Section 5 of the CST Act. Supply to the Bihar unit of Indian Oil Corporation by the Applicant is, therefore, zero rated supply within the meaning of section 16(1)(a) of the IGST Act, and input tax credit is admissible under section 16(2) of the IGST Act notwithstanding that such supply may be an exempt supply.
5. The officer concerned opposes the argument of the Applicant on the grounds that the goods have been transferred to a warehouse in Bihar and subsequently exported from the said warehouse. This is essentially a case of stock transfer of non-taxable goods of Indian Oil Corporation from its West Bengal Unit to its Bihar Unit, (these two units are registered as distinct persons under the GST Act), and as GST is not levied on the goods so transferred to Bihar, the supply to the Indian Oil Corporation's Bihar Unit is exempt supply for the Applicant and no input tax credit is available thereon.

This is in accordance to Section 17(2) of the GST Act.

6. The officer concerned also states the goods, when exported from the warehouse in Bihar is zero rated supply, and Indian Oil Corporation Ltd has admittedly reported the export in the returns for its Bihar Unit. GST paid on inward supplies of inputs and input services in Bihar can, therefore, be claimed by the Bihar Unit. But the GST paid on freight for transportation from Haldia Refinery to Raxaul Depot is billed on the Applicant, Indian Oil Corporation's West Bengal Unit, place of supply of the input service being located in West Bengal. The Applicant cannot claim credit of such GST on his exempt supplies to Indian Oil Corporation's Bihar Unit, since the transfer of goods from Haldia to Bihar is stock transfer of non GST goods and not export and, therefore, not zero rated supplies of the Applicant.

7. In the Applicant's reply to the submissions of the officer concerned it is argued that the officer has failed to appreciate the true nature of the transaction. Transfer of ATF and other non-taxable goods from Haldia Refinery to Raxaul Depot is not supply from the Applicant's Unit to the Bihar Unit of the same Company. Movement of goods for export commences from West Bengal and ends after reaching Nepal. The export warehouse at Raxaul is merely a transit point, where goods are re-warehoused to comply with the procedure prescribed under the Excise Law. The entire movement of goods is for export from India. There is no independent movement from West Bengal to Bihar and the latter, i.e. Indian Oil Corporation's Bihar Unit, has no control over the goods and there is no possibility of diversion for any other purpose.
The Applicant states that the detailed procedure under the Central Excise law, as explained in the Application and subsequent submissions, clearly demonstrates that the sole objective of the movement from Haldia Refinery is export to Nepal and there is unbroken inextricable link of such movement to export warehouse for ultimate export to Nepal. Movement from Haldia Refinery to the export warehouse at Raxaul and loading of the vehicles at the export warehouse and transportation by road to Nepal are two integral parts of same export transaction.
The Applicant further says that the goods are moved based on the MOU between the Governments of India and Nepal followed by the Agreement between Indian Oil Corporation Limited and Nepal Oil Corporation Limited. Actual export occurs under the authentication by the Excise Authority and the Bihar Unit has no control to dispose of the goods otherwise.
It is, therefore, according to the Applicant, sale in course of export in terms of Section 5 of the CST Act.

8. The main issues which need to be considered in the Application can be briefly summarized as follows:
 - a. Whether or not the products transported and supplied by the Applicant are "non-GST products", "non-taxable supplies" "exempt supplies" or "zero rated supply of goods"

- b. Whether the transportation to Raxaul warehouse is to be considered to be for export of supply to Nepal or transfer of goods to Indian Oil Corporation's Bihar Unit for ultimate export to Nepal.
9. Art 366 of the Constitution has been amended by the 101st Amendment of the Constitution and clause 12A inserted, which defines GST as tax on supply of goods and services or both except taxes on supply of alcoholic liquor for human consumption. It does not exclude petroleum products, namely petroleum crude, HSD, ATF, petrol and natural gas, from the ambit of GST. However, under clause 5 of Art 279A of the Constitution these goods shall not be subject to the levy of GST till a date notified on recommendation of the GST Council. Provisions of section 9 (2) of the GST Act gives expression to this arrangement.

This leads to introduction of the concept of non-taxable supplies under section 2(78) of the GST Act. It means supplies on which GST is not leviable. Exempt supplies, as defined under section 2(47) of the GST Act, includes non-taxable supplies.

Under section 2(112) of the GST Act, turnover in State means inter alia the aggregate value of all taxable supplies and exempt supplies made within a State or in course of inter-State trade and export by a taxable person. Petroleum products, being non-taxable supplies, are, therefore, included in the turnover of the Applicant, who is a taxable person.
10. In the Central Sales Tax Act, 1956 the definition of goods has been amended by the Taxation laws (Amendment) Act, 2017 to exclude all moveable goods out of its ambit, except petroleum products and alcoholic liquor for human consumption. It has not been repealed and continues to be the statute for levying taxes on sales of petroleum products in course of inter-State trade or commerce. The Applicant is, therefore, entitled to claim benefit of export under the CST Act, if admissible.

However, unless the Applicant's transportation of non-taxable goods to the export warehouse at Raxaul is 'export of goods' within the meaning of section 2(5) of IGST Act, it cannot be treated as zero rated supply, and credit of GST paid on input services is not admissible. In the present context, therefore, discussion on export as defined under section 5 of the CST Act is relevant only so far as it helps in understanding export under the legal framework of GST.
11. Section 5(1) of the CST Act, 1956 states that a sale or purchase of goods shall be deemed to take place in course of export of the goods out of the territory of India *only if* the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontier of India. Notwithstanding anything contained in section 5(1), the scope of export is further widened in section 5(3) to include the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

The term “export of goods” is defined under section 2(5) of the IGST Act as taking goods out of India to a place outside India. The place of supply of goods exported from India shall be, under section 11(b) of the IGST Act, the location outside India. Clearly, export as defined under section 5(3) of the CST Act, is not relevant under the GST. The defining character of an export transaction both under section 5(1) of the CST Act and section 2(5) of the IGST Act is that it occasions movement of the goods to a place outside India.

12. In the present context, the question, therefore, boils down to whether movement of goods from Haldia Refinery terminates at Raxaul Depot in Bihar when it takes delivery from the Railways, or continues after trans-shipment to other modes of transport for taking it out of India to Nepal. The goods are supplied to the recipient (in this case the Bihar Unit) in India if the movement terminates at Raxaul. In such cases it will be an inter-state supply to a distinct person as defined under section 25(4) of the GST Act, and the place of supply shall be determined under section 10(1)(a) of the IGST Act. If, however, Raxaul Depot is a mere transit point for trans-shipment of goods being moved from Haldia Refinery under specific export order, it will be export of goods from the West Bengal Unit to the recipient outside India (in the present context NOC).
13. The Agreement with NOC is no export order. It is, according to clause 3(a), an umbrella agreement between the parties for a period of five years with effect from 01/04/2017. According to the Agreement, NOC will raise specific Product Delivery Orders (hereinafter the PDO), which are the actual export orders or indents placed on a supply point for loading on any day by and large in line with the projected agreed allocation from that supply point. A supply point shall mean the location within India, closest to Nepal border, mentioned in the annexure to the Agreement, from which the Applicant will load the goods into uplifting vessels for supply to NOC. The export warehouse at Raxaul is one such supply point. Clause 5(c) of the Agreement states that NOC shall furnish at least thirty days before commencement of each quarter, their month-wise, product-wise, location-wise requirement, so that the Applicant can keep the supply points well stocked to meet the requirement. NOC can depute an independent surveyor at the supply point to cross check, verify, inspect the quality and quantity of the goods.
14. Other than the Agreement the Applicant has submitted or referred to no specific export order. Obviously tankers loaded with ATF or HSD cannot move under a general agreement on terms and conditions of business. Such movement requires specific orders placed either by NOC or the Raxaul Depot. It is also clear from the above discussion that NOC places PDO only on the supply points like Raxaul Depot, which needs to be kept well stocked in line with the agreed allocation and communication from NOC. Raxaul Depot places order on Haldia Refinery to keep the supply at the optimum level.
15. The Applicant’s submission that re-warehousing at Raxaul Depot is sufficient evidence of export is also far from true. It is also incorrect to submit that the goods re-warehoused

at the export warehouse cannot be diverted for home consumption. A brief examination of the procedure followed for duty free removal from Haldia Refinery to Raxaul Depot and related issues may help clarifying this aspect.

16. Raxaul Depot of Indian Oil Corporation Ltd is registered with the Excise Authority as an export warehouse and is the exporter in terms of clause 4.1 of Circular No. 581/18/2001-CX dated 29/06/2001 of CBEC. It has executed B-3 Bonds before the Assistant Commissioner of Central Excise, Muzaffarpur Division, Bihar, for export of goods from the warehouse in terms of clause 4.2 of the above Circular. The Applicant can remove goods from Haldia Refinery without paying duty for transfer to Raxaul Depot on the strength of the Bond so executed. The concerned Central Excise Authority in Bihar shall issue certificate of removal in Form CT-2 indicating the details of the Bond executed by the exporter. The exporter fills up the relevant information in CT-2 and makes provisional debit in the Running Bond Account equivalent to the duty payable. The consignor (i.e. Haldia Refinery) prepares an application for removal in Form ARE-3, indicating the serial number of the corresponding CT-2. On receipt of the goods at Raxaul Depot the officer-in-charge of the warehouse countersigns the ARE-3 and dispatches it to the Haldia Range Excise Authority as proof of re-warehousing of the goods. At the exporter's end the provisional debit in the Running Bond Account is converted into actual debit.

If the goods received under ARE-3 are to be exported, an application for export in ARE-1 is to be prepared and submitted to the Customs Authority for endorsement. The Running Bond Account will be credited by an amount equivalent to the duty for the goods mentioned in ARE-1.

If the goods are cleared for home consumption, the exporter pays the duty with interest from the date of clearance from the factory and credits the Running Bond Account to that extent.

17. It is clear from the above discussion that the exporter, registered as export warehouse, can store goods that may be diverted for home consumption. As the nature of clearance, whether for home consumption or export, is finally determined only at the time of removal from the export warehouse, the Excise Authority shifts the incidence of duty to the time of clearance from the export warehouse. Duty free removal from the factory is, therefore, allowed under prescribed procedure for goods being moved to the export warehouse.

It is, therefore, not correct that submission of endorsed copies of ARE-3 to the concerned Excise Authority at Haldia, where the Applicant's factory is located, is evidence of export. It is evidence of re-warehousing of the goods cleared duty free from the factory. Actual evidence of export is ARE-1, endorsed by the Customs Authority, submitted before the appropriate Excise Authority at the export warehouse, failing which the exporter is liable to pay the duty with interest.

Removal without paying duty (under Bond) from Haldia Refinery to the export warehouse at Raxaul, therefore, does not as such amount to export.

Movement from the Applicant's factory at Haldia to the export warehouse at Raxaul is not, therefore, 'inextricably linked' to ultimate export to Nepal. The scope for diversion for

home consumption, whether or not has actually been diverted, breaks the link and makes them separate supplies.

Movement from Haldia Refinery to the export warehouse at Raxaul is not a transit movement in course of export to Nepal. In fact, the Applicant has not claimed on such transportation from Haldia to Raxaul the benefit of exemption from paying GST, as available under serial no. 9B of Notification No. 30/2017 – CT (Rate) dated 29/09/2017 for services associated with transit cargo to Nepal, but has actually been charged and paid GST on the railway freight. Nowhere in the Application does he argue that such GST is not chargeable.

18. The above discussion makes it amply clear that the goods re-warehoused at Raxaul Depot are not moved from Haldia under specific export order and can be either cleared for home consumption or exported. It is, therefore, far from a mere transit point, but the point of storing and final clearance. The final clearance being made from the export warehouse at Raxaul, it is the Bihar Unit that is responsible for export or payment of duty if diverted to home consumption.

In fact, Indian Oil Corporation Ltd admittedly reports the export in the GST returns of his Bihar Unit and not in the ones for the West Bengal Unit. If it were to be treated as export of the West Bengal Unit, 'export' reported would have widely varied with the actual export measured on the basis of PDOs and lifting from the supply point at Raxaul. Clearly, the transportation from Haldia to the export warehouse at Raxaul is no measure of actual export.

The Applicant himself is well aware of the anomaly and has not reported in his returns the transaction as export under section 5 of the CST Act either. Apparently, the Applicant's arguments are at variance with what he and the Bihar Unit have reported in their returns under both the CST Act and the GST Act.

19. The Applicant refers to a few judgments in support of his argument, which are discussed below.

In Nipha Export Pvt Ltd (8 VST 466), pursuant to an export order received at the Head Office in Kolkata, the branch office purchased goods in Haryana and sent them to Kolkata, which exported the goods outside the territory of India. The apex court concurs with the High Court that the movement of goods from Faridabad in Haryana to Kolkata was occasioned in the course of export out of India. The case, however, is of little help to the Applicant, as it is already discussed that the movement of goods from Haldia Refinery to Raxaul Depot is not occasioned by an export order, nor is it inextricably linked with any such order.

In Hindusthan Unilever Ltd (WPTT 636 of 2007) the petitioner purchased tea in Kolkata, transferred it to its branches at Pune and Cochin against declarations in form F, where the tea was blended and packed and exported out of India. Calcutta High Court observed that notwithstanding the intervening factors like transfer to other states or issue of declarations in form F, the tea purchased by or sold to the petitioner in Kolkata was the last sale preceding export within the meaning of section 5(3) of the CST ACT. The

case is not relevant in the present context, as scope of export under section 2(5) of the IGST Act does not include the situations provided under section 5(3) of the CST Act.

20. Transfer of ATF and other non-taxable supplies from Haldia Refinery to Raxaul Depot are not, therefore, export of goods in terms of section 2(5) of the IGST Act, but exempted supplies from the West Bengal Unit to the Bihar Unit of the Applicant, who are distinct persons in terms of section 25(4) of the GST Act.
21. Sections 16(1)(a) and 16(2) of the IGST Act are, therefore, not applicable. The Applicant cannot claim credit of the GST paid on the input services like railway freight on ATF and other non-taxable supplies from West Bengal to his Bihar Unit.

In view of the foregoing we rule as under

RULING

ATF and other non-taxable supplies from the Applicant's Haldia Refinery to the export warehouse of Indian Oil Corporation Ltd at Raxaul are not zero rated supplies. They are non-taxable supplies from the Applicant to the Bihar Unit of Indian Oil Corporation Ltd, who are distinct persons in terms of section 25(4) of the GST Act. The Applicant cannot claim credit of the GST paid on the railway freight for transportation of ATF and other non-taxable supplies from West Bengal to the Bihar Unit.

This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

Sd-

(VISHWANATH)

Member

West Bengal Authority for Advance Ruling

Sd-

(PARTHA SARATHI DEY)

Member

West Bengal Authority for Advance Ruling

