

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Shewratan Company Pvt Ltd
Address	14 Weston Street, Kolkata - 700013
GSTIN	19AAECS0338Q1ZV
Case Number	36 of 2019
Date of application	August 21, 2019
Order No. & date (post rectification)	32/WBAAR/2019-20 dated 11/11/2019
Applicant's representative heard	Sri Abhishek Dugar, FCA

The advance ruling in this matter was pronounced on 21/10/2019. The order, however, did not include discussion about the status under the GST Act of supplies of warehoused goods if supplied to the recipient before clearance for home consumption. It is felt that such a discussion is necessary in the context of the ruling. The order, to that extent, needs to be rectified. This Authority, therefore, proceeds to amend the said order on its own accord under section 102 of the GST Act. As the rectification is not going to enhance the tax liability or reducing the amount of admissible input tax credit from the original order, the requirement under proviso to section 102 of the GST Act does not apply. The amended order as it stands after rectification is provided below. The amended portion is included under the third bracket.

1. Admissibility of the Application

1.1 The Applicant supplies foreign going vessels stores like paint, rope, spare parts, electronic equipment etc. It seeks a ruling on whether it is liable to pay tax on such supplies to foreign going vessels. More specifically, it wants to know whether such supplies are zero-rated supplies.

1.2 Advance ruling is admissible on the above question under Section 97(2)(e) of the GST Act read with section 20(xviii) of the Integrated Goods and Services Tax Act, 2017 (hereinafter the IGST Act). The Applicant states that the question raised in the Application has neither been decided by nor is pending before any authority under any provision of the GST Act. The concerned officer from the Revenue does not object to the admission of the Application.

1.3 The Application is, therefore, admitted.

2. Submissions of the Applicant and the Revenue

2.1. Customs frontier of India, as defined under section 2(4) of the IGST Act, means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (hereinafter the 1962 Act). Section 88(a) of the 1962 Act provides that any warehoused goods may be taken on board any foreign going vessel as stores without payment of import duty if a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form, the export duty etc. has been paid and the proper officer has passed an order for clearance of such goods for exportation. Section 89 of the 1962 Act provides that the goods manufactured in India and required as stores on any foreign going vessel may be exported free of duty.

2.2 The Applicant submits that the above provisions of the IGST Act and the 1962 Act if read together, confirm that supply of stores in a foreign going vessel is export and a zero-rated supply in terms of section 16 of the IGST Act.

2.3 The Applicant also refers to the ruling of AAR, Andhra Pradesh in Fairmacs Shipstores Pvt Ltd {Order No. AAR/AP/10(GST)/2018 dated 20/08/2018}.

2.4 The concerned officer from the Revenue agrees with the Applicant's view.

3. Observations & findings of the Authority

3.1 Warehoused goods, as defined under section 2(44) of the 1962 Act, refer to the goods imported and allowed to be deposited in a licensed warehouse. Section 69 of the 1962 Act allows export of such warehoused goods without paying import duty, provided a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form, the export duty etc. has been paid, and the proper officer has passed an order for clearance of such goods for exportation. Section 88 (a) of the 1962 Act extends the same exemption when such warehoused goods are taken on board any foreign going vessel as stores. The question is whether such stores, when taken on board any foreign going vessel, may be construed as being taken to a place outside India.

3.2 Warehoused goods can either be cleared for home consumption or exported. However, when used as stores in a foreign going vessel, such goods are neither taken out of India (unless they are specifically marked for a foreign destination) to a place outside India nor cleared for home consumption. At the same time, they need documentation like export because such goods cross the limits of the customs area when taken on board the foreign going vessel.

3.3 In terms of the Central Sales Tax Act, 1956, a sale in the course of export takes place when the goods cross the limits of the customs area. However, the export of goods under section 2(5) of the IGST Act and section 2(19) of the 1962 Act means taking the goods from India to a place outside India. The place of supply shall, in terms of section 11(b) of the IGST Act, be the location outside India. Export under the IGST Act (and the 1962 Act as well), therefore, has a much narrower meaning. A foreign going vessel anchored within the territory of India is not a place outside India and taking the stores on board such a vessel does not amount to supply to a location outside India. Section 69 of the 1962 Act cannot, therefore, cover within the ambit of export the case where the warehoused goods are taken on board a foreign going vessel. A special provision needs to be made under section 88(a) of the 1962 Act to extend the facility of exemption from import duty to such imported stores.

3.4 Moreover, section 69 or 88(a) of the 1962 Act has little relevance unless the stores being supplied are warehoused goods. The Applicant does not claim that its supplies of stores to the foreign going vessels are restricted to warehoused goods. In any case, at the time of supply, both the supplier (the Applicant) and the recipient (the foreign going vessel) are located in India. The supply of stores imported or otherwise, to foreign going vessels cannot, therefore, be construed as export unless it is marked specifically for a location outside India. It is not a zero-rated supply.

3.5 [However, supply of warehoused goods to any person before clearance for home consumption is an activity or transaction included in paragraph 8(a) of Schedule III under section 7(2)(a) of the GST Act. The Applicant's supplies to the foreign going vessels shall be treated neither as a supply of goods nor services to the extent, if at all, covered under the above condition. Otherwise, the Applicant is liable to pay tax under the GST Act or the IGST Act, as the case may be, on its supplies of stores to the foreign going vessels unless it is marked specifically for a location outside India.]

3.6 The Applicant's reference to the ruling of the AAR, Andhra Pradesh, referred to above, is misplaced. The supplier there is supplying warehoused goods as stores to the merchant ships on the foreign run where the goods are not to be consumed until the vessel crosses the territorial waters of India. In other words, the foreign going vessel is merely transporting the stores until it reaches a location outside India. Facts of the Applicant's case are not similar or that specific. Foreign going vessels obtain stores and spare parts while staying anchored at a port in India. There is no reason why the part of such stores that [the recipient sources from inland and consumes or uses for repairing or servicing of the vessel while in India should be treated as export].

In view of the foregoing, we rule as under.

RULING

The Applicant's supply of stores to foreign going vessels, as defined under section 2(21) of the Customs Act, 1962 Act, is not export or zero-rated supply, unless it is marked specifically for a location outside India. The Applicant is, therefore, liable to pay tax on such supplies under the GST Act or the IGST Act, as the case may be.

[However, the Applicant's supplies to the foreign going vessels shall be treated neither as a supply of goods nor services in terms of paragraph 8(a) of Schedule III under section 7(2)(a) of the GST Act if such stores are warehoused goods supplied to the recipient before clearance for home consumption].

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.



(SUSMITA BHATTACHARYA)
Member

West Bengal Authority for Advance Ruling



(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling