DELHI APPELLATE AUTHORITY FOR ADVANCE RULING
C.R Building, I.P Estate,
New Delhi-110002

(Constituted under section 99 of the Delhi Goods and Services Tax Act, 2017(Delhi Act 03 of 2017) vide Govt. of NCT of Delhi's Notification No. F.3(6)/Fin.(Rev.-I)/2018-19/DS-VI/389 dated 03.09.2019)

BEFORE THE BENCH OF

Smt. Mallika Arya, Member(Centre)

Shri Ankur Garg, Member(State)

Order No. 03/DAAAR/2022-23 /1999-2004/ **Date:- 23.05.2022** 21.06.2022

Sl. No.	Name and address of the Appellant	M/s Rod Retail Private Limited, 1-E, Jhandewalan Extension, Near Naaz Cinema Complex, New Delhi-110055 M/s Rod Retail Private Limited, 204, Ground/F/F , Okhla Industrial Estate, Phase-III, New Delhi-110020
1	GSTIN	07AADCR6486R1ZF
2	Advance Ruling Order against which appeal is filed	01/DAAR/2018 dated 27.03.2018
3	Date of filing appeal	08.06.2018
4	Represented by	Sh. Ashok K. Bhardwaj, Advocate & Sh. Manish Hirani, Advocate
5	Whether payment of fees for filing, appeal is discharged. If yes, the amount and challan details	Yes CPIN No:- 18060700041742 dated 06.06.2018

Appellate Authority for Advance Ruling ★ Delhi ★

At the outset we would like to make it clear that the provisions of CGST, Act 2017 and DGST, Act 2017 are pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions,.a reference to the CGST Act would also mean reference to the corresponding similar provisions in the DGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Delhi Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Rod Retail Private Limited, 204, Ground/F/F, Okhla Industrial Estate, Phase-III, New Delhi-110020 New Delhi (herein after referred to as Appellant) against the advance Ruling No. 01/DAAR/2018 dated 27.03.2018. The date of communication of Advance Ruling to the appellant was 10.04.2018

BRIEF FACTS OF THE CASE

3. The applicant is in the business of retail sale of sunglasses. The applicant was registered under the Delhi Value Added Tax Act, 2004 and the Central Sales Tax Act, 1956 and now the applicant has migrated to GST regime and its present provisional GST Number is 07AADCR6468R1ZF. The applicant has several retail outlets in Delhi and one such outlet is at Terminal-3 (International Departure), Indira Gandhi International Airport, New Delhi. The present application relates to the question arising from the transaction conducted from the said outlet.

3.1 Every International Airport has a "Landside" and an "Airside". The Landside area comprises of Check-in counters and Baggage Drops and Airside area has aircrafts for boarding. A passenger crosses over from Landside to Airside by passing through Customs & Immigration area and then through security on to the Boarding Gate for departure. The applicant's concerned retail outlet is in the Security Hold Area on crossing the Customs & Immigrations with the address - Shop No. INS-18, SHA Area, International Departure, Terminal-3, IGI Airport, New Delhi-110037. The said outlet is permitted to function beyond the Customs Area and within the Security Hold Area of the IGI Airport vide an arrangement with the Delhi International Airport Private Limited, dated 06.06.2016. The Concept and Category of the applicant under the said agreement being Retail and Sunglasses and the brand - "Sunglass Hut", which is a retail brand of the International group Luxotica. For the purposes of sale from the said outlet, the applicant procures supplies from the Sunglass Hut brand owner M/s Luxottica India Private Limited, Gurgaon, after payment of integrated Tax (Inter-State Supply form Gurgaon to Delhi) @ 28%. The sunglasses procured from the supplier are further supplied by the applicant to the International passengers travelling to outside India against a valid international boarding pass. The applicant supplies goods only to such passengers which have a valid international boarding pass. In few instances, where domestic passengers are travelling to a domestic destination on a transit International flight, no supply to such passengers holding a domestic boarding pass is made by the applicant. Presently, the applicant is charging SGST/CGST on the supply invoices issued to the International passengers. However, the applicant is of the view that, it's supply of goods to international passengers is a zero rated transaction, being 'export sale' within the meaning of the same under section 2(5) of the IGST Act. The issue is whether the location of the retail

outlet of the applicant in the Security Hold Area of the International departure is outside India though geographically it is within the territory of India. The said area is after crossing the Customs Frontier of India and is claimed to be situated outside the territory of India.

3.2 The details of question on which advance ruling was requested was as to whether the supply of sunglasses from the retail outlet of the applicant at Terminal-3, IGI Airport (International Departure), New Delhi, to outbound international passengers against the international boarding pass is liable to SGST under the DGST Act, 2017 and CGST under the CGST Act, 2017 or is it a zero rated "export" supply within the meaning of Section 2(23) r/w Section 2(5) of the IGST Act, 2017?

3.3 The AAR vide Order No. 01/DAAR/2018 dated 27.03.2018, received by the appellant on 08.06.2018 held that *''the supply of goods to the International passengers going abroad by the applicant from their retail outlet situated in the Security Hold Area of the Terminal-3 of IGI Airport, New Delhi may be taking place beyond Customs Frontiers of India as defined under Section 2(4) of the IGST Act, 2017. However, the said outlet is not outside India, as claimed by the applicant but the same is within the territory of India as defined under Section 2(56) of the CGST Act, 2017 and Section 2(27) of the Customs Act, 1962 and hence the applicant is not taking goods out of India and hence their supply cannot be called "export" under Section 2(5) of the IGST Act, 2017 or "zero rated supply" under Section 2(23) and Section 16(1) of the IGST Act, 2017. Accordingly, the applicant is required to pay GST at the applicable rates.''*

4. The appellant filed the appeal on 08.06.2018 and case falls within the condonation period of 30 days under proviso to s100(2) of CGST Act, 2017.

SUBMISSIONS OF THE APPELLANT

5. That an application under section 97(2)(e) of the DGST Act, 2017 was moved before the Authority for Advance Ruling, Delhi on the question of the above supply being zero rated or not.

5.1 The appellant submitted that the Ld. Authority had not considered the judicial legacy of the term "Customs Frontiers of India" and which is very vital for deciding the issue. That, simply put the definition of 'export' under Section 2(5) of the IGST Act defines a procedure for export and which is taking goods out of India to a place outside India. The definition of 'export' is couched in such a manner that the words crossing "customs frontiers of India" are embedded in the definition itself- as no goods can be taken out of India to a place outside India unless the customs are crossed. Hence for all practical purposes, definition of export can also be read as "taking goods after crossing customs frontiers of India to a place outside India". The definition of customs frontiers of India under section 2(4) of the IGST Act is not co-terminus with the territorial extent of India and thus it cannot be equated with definition of India given in section 2(56) of the CGST Act or section 2(27) of the Customs Act, 1962 and in that sense the goods having crossed the Customs frontiers are outside India.

5.2 That, section 5(1) of the Central Sales Tax Act, 1956 (CST Act) mentions the words

"crossing the customs frontiers of India". And prior to the introduction of section 2(ab) of the CST Act, which defines "Crossing the Customs frontiers of India ", the Supreme Court of India in the case of *State of Madras Vs Daver & Co. (AIR 1970 SC 165)* held that the words 'customs frontiers of India' in section 5 of the CST Act are co- terminus with the extent of territorial waters of India and do not end or start with Customs barrier as pleaded by the Respondent therein. That, the said interpretation of the Highest Court led to a recommendation by the Law Commission in its 61st report to introduce section 2(ab) in the CST Act to define "Crossings the Customs frontiers of India". The view of the Law Commission was that, the decision of Supreme Court in Daver's case was rendered with reference to an assessment year when the Sea Customs Act of 1878 was in force. However the problem can survive under the Customs Act, 1962 also because under the latter Act, the definition of India includes Indian territorial waters. The question could arise whether customs frontiers of India in the Central Sales Tax Act means the frontiers of "India" as defined in the Customs Act-which includes territorial waters. The Law Commission was of the view, that, the expression "customs frontiers" was given a wide meaning in the old Customs Act or in terms of the present Customs Act, 1962 — "territorial waters" have been included within India- because such a wide connotation is considered necessary for the purpose of the enforcement of the customs law, particularly for surveillance and similar purpose. But in practice, the actual checking of the goods mostly takes place not at the edge of the national territorial waters, but at a "customs station", when the goods cross the customs barrier. The Commission emphasized that the expression 'customs station' has a statutory connotation and can be conveniently utilized and hence an amendment of section 2 of the CST Act was recommended by the 61st Law Commission and which was implemented by the legislature by incorporation of section 2(ab) in the CST Act by the CST Amendment Act of 1976.

5.3 That, the said definition of "customs frontiers of India" also finds place in section 2(4) of the IGST Act and hence there was no reason for the Authority to take a different view of the words "India" in the definition of export in the impugned ruling and roll back the interpretation to the point when Daver's case was decided. In fact on the parity of the reasoning above, there is no change in the pre GST and post GST regime as far as the tax on goods after crossing the customs frontiers of India is concerned.

5.4 That, the significance of location of the appellant's retail outlet and the resultant supply of goods taking place beyond the customs frontiers of India (as also agreed by the Ld Authority) is purely evidentiary in nature. The Security Hold Area (SHA) and which is situated beyond the Customs frontiers is not accessible to each and every person. The access to the SHA is strictly regulated by the Airport Authorities and it allows access only to international passengers having a valid international boarding pass and to the person employed therein or to persons authorised by such employees. The supply of goods by the appellant to such international passengers is a substantive evidence of the goods moving out of India as he has entered the SHA with the intent to board an International flight. The SHA is not a Shopping Mall and any supply from the said area is only incidental to the main fact of a passenger travelling out of India.

5.5 The Ruling under Section 98(4) of the DGST Act, 2017, dated 27.03.2018 of Delhi Authority for Advance Ruling in Advance Ruling No. 01/DAAR/2018, has not considered the above important facts and has also incorrectly interpreted the definition of 'export of goods' as given in section 2(5) of the IGST Act and hence challenged before the Hon'ble Appellate Authority under Section 100(1) of DGST Act, 2017 as per the Grounds of Appeal

6. That, the appellant relied on the definition of export under section 2(5) of the IGST Act, 2017.

6.1 The submission is that the said definition has the words "crossing customs frontiers of India "embedded in it as no goods can be legally taken out of India unless they cross the Customs. The words customs frontiers of India are defined in section 2(4) of the IGST Act and therefore the meaning attributed to the words "India" in the impugned Ruling as being co-terminus to the extent of territorial waters of India by invoking the definition of "India" given in section 2(56) of the CGST Act and section 2(27) of the Customs Act, 1962, is out of place and not in terms of the judicial precedents and judicial recommendations on the meaning of the said words.

6.2 The Impugned Ruling grossly erred in creating an artificial distinction between "India" and "customs frontiers of India" which was entirely irrelevant for the purpose of examining whether any tax is leviable on supplies made to international outbound passengers from duty free area. The definition of "Import of Goods" per Section 2(10) of the IGST Act is in para-materia with the definition of "Export of Goods" per Section 2(5) of the IGST Act though reverse in nature as far as the movement of goods are concerned. It may be noted that distinction between "India" and "custom frontier of India" has been specifically incorporated by Section 7(2) of the IGST Act in case of supply of goods imported into territory of India but no such distinction exist in relation to supply of goods exported out of India.

6.3 That, the interpretation given in the impugned ruling to the territorial extent of India being co-terminus with the territorial waters by invoking section 2(56) of the CGST Act and section 2(27) of the Customs Act is in complete ignorance to the definition of "Customs Frontiers of India" in section 2(4) of the IGST Act and its relevance to the definition of 'export' under section 2(5) of the IGST Act and the interpretation in the ruling dates back the ruling to a period when the meaning to the words "Customs Frontiers of India" was not defined. The rich judicial legacy on the issue of territorial extent while dealing with the export/import sales has not been relied upon in the impugned ruling. The crux of the matter is, that, the words 'taking goods out of India to a place outside India' mentioned in the definition of export u/s 2(5) of the IGST Act are synonymous with the words "crossing customs frontiers of India" and the term "Customs frontiers of India" is defined in section 2(5) of the IGST Act hence recourse to definition of 'India' in the impugned ruling is uncalled for and erroneous.

6.4 The observation in the impugned Ruling to the effect, that, the transaction ought to have taken place beyond the territories of India and not within the geographical territory of India' did not find favour with the Supreme Court of India in the case of *M/S Hotel Ashoka*

(India Tourism Dev. Corp Ltd) Vs Assistant Commissioner of Commercial Taxes & Another- 48 VST.443 (SC))- where the Hon'ble Court was examining section 5 of the CST Act. The Court very categorically held that, *"when any transaction takes place outside the customs frontiers of India, the transaction would be said to have taken place outside India"*. The Court further observed, that, "Though the transaction might take place within India but technically, looking to the provisions of Section 2(11) of the Customs Act and Article 286 of the Constitution, the said transaction would be said to have taken place outside India. It is submitted, that, there was no reason for the Advance Ruling Authority to take a divergent opinion on this aspect in the impugned ruling as the provisions in respect of the transaction in Pre GST and Post GST regime are similar in nature and its interpretation stands concluded in favour of the appellant because of the authoritative pronouncement of the Supreme Court of India in Hotel Ashoka's case and which is law of the land under article 141 of the Constitution of India. The appellant relies upon the definition of 'export' u/s 2(5) of the IGST Act to show that the word 'export' mentioned therein means no more than 'taking goods out of India'. The buyer purchases the goods for his own use on the journey of the aircraft to foreign countries and which in itself is sufficient to satisfy the definition of 'export'- taking goods out of India.

6.5 That, significance of the Appellant's retail outlet being in the Security Hold Area (which is situated beyond the Customs Frontiers of India) is evidentiary and it is a sustentative evidence that the goods supplied to an International passenger against an international boarding pass will be taken to a place outside India. The Security Hold Area at Terminal 3 —Departure (IGI) is not accessible to all and sundry and entry to the said area is strictly regulated. An international passenger enters the area for boarding an International flight and the said area is not a Shopping Mall. Thus, the location of the Appellant's outlet provides a substantive evidence for the supply being taken out of India by the passenger. The goods domestically procured on payment of CGST/SGST or IGST and supplied from the Outlet of the Appellant to international outbound passengers do not attract the levy of CGST/SGST or IGST and qualifies as export as defined under Section 2(5) of the IGST Act. As per Section 2(5), export is defined as taking goods out of India to a place outside India. It may be noted that export has been defined in an identical manner under Section 2(18) of the Customs Act. In the case of Lucas TVS v. Assistant Commissioner of Customs, Madras 1987 (28) ELT 266 (Mad. HC), it was held by the Hon'ble Madras High Court that in order to constitute 'export', it is not necessary for the goods to move beyond the territorial waters and once the goods are beyond the control of the person, the goods must be described as exported and were on their way to the country of destination. It is submitted that the meaning of export as explained in the context of the Customs Act will be applicable to the IGST Act as well. Here, it may be noted that supplies are made to the outbound passengers only after scanning the boarding pass recording inter alia the destination outside India where the passenger is traveling. Further, once the goods are supplied to the passengers, they are out of the control of the Appellant and are destined to move out of India. The supply of goods thus qualifies as export both under the provisions of the Customs Act and also the IGST Act.

6.6 The international outbound passenger when accessing the duty free area has already cleared immigration and cannot go back into the territory India by crossing the customs

frontiers and can only depart from India along with the goods purchased at the Outlet. The supply made by the Outlet amounts to export and the carriage of the goods to a destination outside India is imminent and without any option. In these circumstances, the supply of the goods amounts to export and will be zero rated under Section 16 of the IGST Act.

6.7 It was submitted that is irrelevant as to who transports the goods outside India. The fact that the goods are handed over to an outbound passenger with a valid boarding card is proof of export and it is irrelevant whether the passenger is the carrier of goods outside India. Such carriage of goods by the passenger will not militate against the factum of 'export' which is only concerned with the physical movement of goods outside India.

6.8 The appellant prayed that since the impugned order has not examined the true import of the definition of export and decided the application on the basis that the appellant's outlet is situated within India (though beyond the Customs Frontiers of India), thus the impugned Ruling is bad in law and liable to be set aside and decided in accordance with the definition of 'export' and the definition of "Customs Frontiers of India". That, in the alternative, the Hon'ble Authority may be pleased to pass any other order giving relief to the Appellant.

DISCUSSION AND FINDINGS

7. We find that in terms of Section 100 of the CGST Act, an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, the Appellate Authority is empowered to allow the appeal to be presented within a further period not exceeding 30 days if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days. For this we need to establish when the advance ruling order No 01/DAAR/2018 dated 28.03.2018 was communicated to the appellant. Section 169 of the CGST Act prescribes the modes of service of orders. It is seen from the records available in the office of the Advance Ruling Authority that the Advance Ruling order was received by the appellant on 10.04.2018 and an appeal against the same was filed on 08.06.2018.

7.1 In the Form ARA-02, the appellant has stated that the date of communication of the advance ruling order is 08.06.2018. Clearly the appeal has been filed within the prescribed time period of thirty days from the date of communication of the order and has been filed well before the issuance of Notification dated 03.09.2019 vide F.3(6)/Fin.(Rev.-I)/2018-19-DS-VI/389 wherein the Chief Commissioner of Central Tax, Delhi and Commissioner of State Tax are Members

8. We have given our thoughtful consideration to the issue raised before us and we find the issue in this appeal is limited as to whether the sales effected from the Security Hold Area of the IGI Airport, T-3, New Delhi tantamount to "export of goods'' and are well within the definition of "export of goods" under the IGST Act, 2017.

9. It is essential that the relevant definitions under the provisions of IGST Act, 2017, CGST Act, 2017 & Customs Act, 1962 are extracted for the ease of understanding and reference

IGST ACT 2017

Section 2

4) "customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (52 of 1962.);

(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

(21) "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

(23) "zero-rated supply" shall have the meaning assigned to it in section 16;

Section 16

16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.

CGST Act, 2017

Section 2

(56) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;

(79) "non-taxable territory" means the territory which is outside the taxable territory;

(109) "taxable territory" means the territory to which the provisions of this Act apply;

Section 7

7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Customs Act, 1962

Section 2

11) "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

(13) "customs station" means any customs port, *customs airport, international courier terminal, foreign post office* or land customs station;

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes *any owner, beneficial owner* or any person holding himself out to be the exporter;

(27) "India" includes the territorial waters of India;

(28) "Indian customs waters" means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7] of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river;

9.1 We find that as per Section 2(5) of the Integrated Goods and Services Tax Act, 2017, "export of goods" with its grammatical variations and cognate expressions, means taking out of India to a place outside India. Further, as per Section 2(56) of CGST Act, 2017 "India" means the territory of India as referred to in article 1 of the Constitution of India, its Territorial Waters, Seabed and Sub-oil underlying such waters, Continental Shelf, Exclusive Economic Zone (EEZ) or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. For the purpose of CGST Act, India extends upto the Exclusive Economic Zone upto 200 nautical miles measured from the appropriate baseline.

9.2 On going through the definition of "customs frontiers of India" under s2(4) of the IGST Act, 2017, we find that it has reference to the "customs area" as defined in section 2 of the Customs Act, 1962. In terms of s2(11) of the Customs Act, 1962 "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

9.3 We find that the location of the appellant's shop is in the Security Hold Area (SHA) and this is undisputed fact on record. On a conjoint reading of the definitions, as extracted herein, it naturally follows that appellant's shop in SHA cannot by any stretch of imagination be said to be located outside India. Instead, we find that the appellant's shop is located within India, as defined under s2(56) of the CGST Act, 2017 read with s2 (27) of the Customs Act, 1962. In the light of the aforesaid findings of ours, when the shop of the appellant is located in the SHA, the same is in 'India'.

9.4 Moving ahead we need to ascertain as to whether the same constitutes '"export of goods" or ''zero rated supply". Export of goods "export of goods" means taking goods out of India to a place outside India. We have already held that the transactions of the appellant are taking place in the SHA, which falls well within the definition of 'India, as extracted herein. In light of the aforesaid finding, we conclude that the sale transactions of the appellant cannot be equated to the 'export of goods' under s2(5) of the IGST Act, 2017 read with s2(19) of the Customs Act, 1962.

9.5 The appellant has also drawn our attention to the fact that their transactions should be treated as 'zero-rated supply'. We have already held in foregoing paras that the sale transactions from the SHA to the outbound international travellers do not fall within the definition of 'export of goods'. In view of the aforesaid findings, section 16, of the IGST Act, 2017 gets ousted automatically as the said section deals with 'export of goods'.

10. Notwithstanding the aforesaid, Section 15 of the IGST Act, 2017 is applicable to tourists leaving India and any supply of goods taken out of India by him shall be refunded in the manner prescribed. As per Explanation appended to Section 15 of the IGST Act, 2017 "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes. This section is yet to be operationalized and the payment of IGST will be refunded to the tourist as per the procedure to be prescribed.

11. In the context of the aforesaid findings of ours, we would like to repel the arguments of the appellant that they should be treated on par with Duty Free Shops(DFS) and the judgments rendered and relied upon pertain to pre-GST era and do not come to the aid of the appellant.

12. We would like to buttress our findings by relying on the judgment of the Nagpur Bench of the Hon'ble Bombay High Court in the case of A1 Cuisines Private Limited Vs. Union Of India, and State of Maharashtra, reported at 2018 (12) TMI 1278 - Bombay High Court wherein the issue in the Writ under reference was similar to that of the issue being dealt with by us. The Hon'ble High Court, after hearing the rival submissions, held as under:

> *"8. We have carefully considered the submissions of the petitioner in the instant petition and have perused the provisions of Article 286 of the Constitution of India, GST laws, Customs Act, 1962 and Finance Act, 1994. We have considered the Judgment of the Hon'ble Supreme Court in the case of Hotel Ashoka (supra). We have also perused the two Orders of the CESTAT and of the Central Government following the case of Hotel Ashoka, which are relied upon by the petitioner.*
>
> *12. The aforesaid Judgments are clearly applicable only in respect of supplies to or from duty free shops situated after the passenger crosses the immigration counter beyond the Customs Frontiers, at arrival or departure hall of International Airport Terminals, where the transaction would be said to have taken place outside India. The International travel of incoming or outgoing passenger after immigration clearance would be beyond any doubt. In such event,*

whether it is the sale/purchase/supplies of goods or services, to or from such duty free shop, the same is said to be taken place outside India. Hence, the same would be a "nontaxable supply" under Section 2(78) of CGST/SGST and such duty free Shops located at the International Airports would be in "nontaxable territory" as defined in Section 2(79) of CGST/SGST. As per section 2(24) of IGST, the same meaning as given in CGST/SGST applies for IGST as well.

13. Whereas in the GST regime, the aforesaid Judgments would squarely apply for the sale/purchase/supplies of goods or services to or from duty free shop situated after the passenger crosses the immigration counter at arrival or departure hall of International Airport Terminals; however, ***they would have no application to shops located at a domestic Airport or Domestic Security Hold Area, which are before even the immigration clearance by a passenger, where the transaction cannot be said to have taken place in any area beyond the customs frontiers of India or outside India****. Even otherwise, a passenger travelling on a domestic flight from Nagpur may or may not travel abroad, and the Customs Authorities would not be able to have effective check and control to verify whether the goods purchased from Domestic Airport at Nagpur are actually taken abroad by the passenger.*

14. ***We are thus unable to agree with the petitioner and find no merit in this petition. No case is made out even on prima facie basis to issue any directions or any notice in that regard. With the above observations, the petition stands dismissed."***

13. Based on the elaborate finding of ours, we hold that based on the provisions of law, as extracted herein, we hold that transactions i.e. supply of goods to outbound international travellers fall within the definition of "taxable territory" and when read in conjunction with section 7 of the CGST Act, 2017 forms ''supply'' and attracts the applicable GST on the date of supply of the goods. We hold it accordingly.

14. In the light of the findings of ours read with the judgment A1 Cuisines Private Limited(*supra*) relied upon by us, we are of the considered view that the Ruling challenged before us by way of an appeal is legally tenable in the eyes of law and no infirmity has crept in the findings and merits being upheld and we do so.

15. We accordingly proceed to order as under:

ORDER

The appeal, being devoid of merits, is dismissed.

Mallika Arya 23/5/2022

(Mallika Arya)
Member(Centre)
Member
Appellate Authority for Advance Ruling

Ankur Garg 23/05/22

(Ankur Garg)
Member(State)
Appellate Authority for Advance Ruling

By Speed Post & e-mail:-

1. M/s M/s Rod Retail Private Limited,
   1-E, Jhandewalan Extension,
   Near Naaz Cinema Complex,
   New Delhi-110055

2. M/s Rod Retail Private Limited,
   204, Ground/F/F,
   Okhla Industrial Estate,
   Phase-III,
   New Delhi-110020

E-mail:

1. lahri-vk@dlfbrand.in
2. corporateaffairs@dlfbrand.in
3. askbnew@gmail.com

Appellate Authority for Advance Ruling
Delhi

Copy to:-

1 The Member(Centre), Advance Ruling Authority Delhi.
2 The Member(State), Advance Ruling Authority Delhi.
3 The Pr. Commissioner of CGST & CX, Delhi North, C.R. Building, New Delhi, along with a spare copy for jurisdictional Assistant Commissioner of CGST & CX.
4 Sh. Manoj Kumar Sharma, D.R./Assistant Commissioner of State Tax, (Ward-206)/KCS, Vyapar Bhawan, I.P. Estate, New Delhi-110002, along with a spare copy for jurisdictional Assistant Commissioner of State Tax.