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THE GOA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

Vikrikar Bhavan, Old High Court Building, Panaji, Goa, Pin Code 403001.
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(constituted under Section 99 of the Goa Goods and Services Tax Act, 2017)

ORDER NO. GOA/AAAR/01/2019-20 / 3072 Date: 03 February, 2020

BEFORE THE BENCH OF

Shri Dipak M. Bandekar, Member

And

Shri Vasa Seshagiri Rao, Member

GSTIN Number	**30AAACC5479J1ZP**
Legal Name of Appellant	**M/s Chowgule and Company Private Limited**
Registered Address	**Chowgule House, Mormugao Harbour, Goa- 403803**
Details of appeal	**Appeal No. GOA/GST/AAAR/01/2019-20 Dated: 26.06.2019**
Appeal against	**Advance Ruling No. Goa/GAAR/11 of 2018-19/514 dated 03.06.2019**
Jurisdictional Officer	**State – STO Panaji Center – Range II**

PROCEEDINGS

ISSUED

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Goa Goods and Services Tax Act, 2017)

* * * * *

Unless mention is specifically made, reference to provisions under Central Goods and Services Tax Act, 2017 would also mean as a reference to the same provisions under Goa Goods and Services Tax Act, 2017.

1. The present appeal has been filed under Section 100(1) of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017 (hereinafter commonly referred to as GST Act) by M/s Chowgule and Company Private Limited, registered vide GSTIN **30AAACC5479J1ZP** against the Advance Ruling No. GOA/GAAR/11 of 2018-19/514 dated 03/06/2019 passed by the Authority for Advance Ruling under GST, Goa State ("AAR" / "lower authority").

Brief facts of the case:

2.1. M/s Chowgule and Company Private Limited, Chowgule House, Mormugao Harbour, Goa- 403803 (hereinafter referred to as "the appellant" / "M/s.CCPL") registered under the GST law having GSTIN 30AAACC5479J1ZP, filed an application under Section 97 of the Goa Goods and Services Tax Act, 2017 (hereinafter referred to as the SGST Act) and the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) seeking an Advance Ruling in respect of the following questions:

1. Whether IGST at 5% of assessable value is applicable on import of iron ore for conversion into pellets and export the resultant product (Iron ore pellets) back to same supplier in view of the fact that import duty is not applicable in view of the exemption under General Exemption No. 66 (Exemption Notification No. 32/97-Cus dated 1st April, 1997) for job work.

2. If answer to question (i) is yes, whether the applicant as recipient of imported iron ore will be liable to pay the IGST under applicant's GSTIN as the applicant in any case is the consignee of the imported iron ore.

3. If answer to question (ii) is yes, whether the applicant can avail the input tax credit for the IGST so paid as per Section 16 of the CGST Act.

4. Whether the applicant can claim refund of unutilised input tax credit on export of services as per Section 16(3)(a) of the IGST Act and 54(3) of the CGST Act.

2.2. After going through the provisions of the IGST Act, 2017, CGST Act, 2017 and SGST Act, 2017, the Goa Authority for Advance Ruling, vide its Advance Ruling No. GOA/GAAR/11 of 2018-19/514, dated 03.06.2019 gave the Advance Ruling as under:

1. The appellant is liable to pay IGST on import of iron ore.

2. Same as above in point no. 1.

3. The appellant is eligible to avail the input tax credit towards payment of IGST under Section 16 of the IGST Act.

4. The applicant is not eligible for refund of unutilised input tax credit on export of goods or services as per the second proviso to sub section 3 of Section 54 of the CGST Act.

Grounds of Appeal

3. Aggrieved by the aforesaid Advance Ruling ("AR"/"impugned ruling/order"), the appellant filed the present appeal before this Appellate Authority for Advance Ruling for GST, Goa.

4. In appeal dated 26.06.2019, the Appellant avers that the Advance Ruling Authority has applied the second proviso to Section 54(3) of the CGST Act, 2017 which does not apply to the appellant since the appellant is exporting a service and not goods.

As per second proviso to Section 54(3) of the CGST Act, 2017, no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty. The appellant's contention that he is not exporting goods but is exporting a service. They submitted that even presuming but not admitting that the export tantamount to export of goods, the same are not subjected to export duty as the Govt. Vide Notification No. 1/2016-Customs dated 4th January, 2016 has notified that the rate of export duty on Iron Ore Pellets is 0%. They submitted that the contention of the Advance Ruling Authority that goods exported are subjected to export duty is not correct.

5. Subsequently vide their letter Ref No. CCPL/GST/19-20/23 dated 16.01.2020, the appellant have added an additional ground of appeal. They contended that the Learned AAR has erred in holding that the appellant is liable to pay IGST on iron ore imported into India in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 read with Section 5(1) of the IGST Act, 2017.

6. An opportunity of personal hearing was accorded which was held on 21/01/2020 wherein the authorized representatives of the appellant reiterated their written submissions. Further, they contended that they are entitled to claim refund of unutilised input tax credit on export of services as per Section 16(3)(a) of the IGST Act and 54(3) of the CGST Act. They also contended that the Learned AAR had erred in holding that the appellant is liable to pay IGST on iron ore imported into India in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 read with Section 5(1) of the IGST Act, 2017.

Discussion and Findings:

7. We have carefully gone through the material on record including the facts involved, the lower Authority's ruling, the relevant statutory provisions and the appellant's grounds/submissions against the Advance Ruling.

8. The short issue for determination is whether the appellant is entitled to claim the refund of unutilised input tax credit on export of services as per Section 16(3)(a) of the IGST Act and 54(3) of the CGST Act, as claimed by them or whether they are not entitled to the said refund, as held in the impugned ruling of the lower authority. The further issue for determination is w.r.t. additional ground of appeal taken by the appellant against the ruling rendered in respect of their questions no.s 1 & 2 above.

9. We find that in response to the questions raised for advance ruling in the application, the Advance Ruling Authority has held w.r.t. Question No.s 1 & 2 that the applicant is liable to pay IGST on import of iron ore; w.r.t. Question No.3 that 'the applicant is eligible to avail the input tax credit towards payment of IGST under Section 16 of the IGST Act; and w.r.t. Question No. 4 that the applicant is not eligible for refund

of unutilized input tax credit on export of goods or services as per second proviso to Section 54(3) of the CGST Act.

10.1. The appeal as initially preferred by the appellant is with regard to the decision of AR in respect of Question No.4, holding that they are ineligible for refund of the unutilized input tax credit.

10.2. The main contention of the appellant against the above ruling is that firstly, they are exporting services but not goods and therefore that proviso to Section 54(3) is not applicable to reject their eligibility for refund; and further even assuming that goods were exported the same are not subjected to export duty as held by the lower authority.

10.3. In order to address the above issue, it is pertinent to refer to the relevant statutory provision viz., Sec.54 (3) of the CGST Act, 2017 which reads as follows:

> ***SECTION 54. Refund of tax. —***
>
> *(1) ....*
>
> *(2) ....*
>
> *(3) ....*
>
> *Provided that no refund of unutilised input tax credit shall be allowed in cases other than -*
>
> *(i) zero rated supplies made without payment of tax;*
>
> *(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council :*
>
> ***Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty :***
>
> *Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.*

10.4. We find that it is an admitted position of the appellant that after conversion of iron ore into pellets, the pellets are exported to the non-resident party or to any other non-resident parties as nominated by the non-resident with whom they have/intend to have contract. Hence, their contention that they are exporting only services, but not goods is not tenable.

11.1. The next question is whether the said goods exported by appellant are 'subjected to export duty' whereby the proviso to Sec. 54(3) ibid is attracted. The lower authority has examined this aspect and considered that the rate of export duty on iron ore pellets is Nil, however Nil rate of tax is also a rate of tax/duty; and that since the goods exported are covered under Second Schedule to the Export Tariff appended to the Customs Tariff Act, 1975 the said goods are to be considered as subjected to tax i.e., export duty; and hence, the exclusion under proviso to Section 54(3) is applicable, whereby the appellant is not eligible for refund of unutilized input tax credit.

11.2. We do not find any flaw in the above reasoning and findings of the lower authority. That is, the statutory provision i.e, proviso to Sec.54 (3) ibid speaks of 'goods which are subject to export duty'. The phrase 'subject to export duty' is equivalent to 'leviable to export duty', in the given context. It is not denied that the goods exported are covered under the Export Tariff as being subject to i.e., leviable to export duty, though by an exemption Notification such export duty payable is NIL. It is well-settled principle that goods being exempted or chargeable to Nil rate of duty by virtue of Notifications etc., does not remove the goods from the category of those 'leviable to duty'.

11.3. In Collector of C.Ex., Hyderabad vs. Vazir Sultan Tobacco Ltd., 1996 (83) ELT,3 (S.C.), Hon'ble Supreme Court held that ' Nil rate of duty is also a rate of duty'. This was rendered in the context of Central Excise Act/Rules; however the ratio therein applies in the given context. Moreover, the 'export duty' is levied under Customs Act, 1962 under levying Section 12. The following decisions w.r.t. Customs duties (which include export duty) are squarely applicable in the given context.

(i) In Jain Shudh Vanaspati & others vs UoI & others [1983 (14) ELT.1688 (Del.), the Hon'ble Delhi High Court has *inter alia*, held as follows:

> ***Exemption Notification does not delete the tariff item from the Schedule to the Customs Tariff Act, they continue to be dutiable even after exemption.***
>
> ***- The notification under Section 25(1) of the Customs Act, 1962 is issued precisely because the goods are covered by First Schedule to the Customs Tariff Act and are subject to duty of customs. The only effect of notification issued under Section 25(1) is to reduce the effective rate of duty leviable, but goods continue to be dutiable. Therefore, the issue of notification under Section 25(1) ibid does not mean that the goods in question are not chargeable to levy of duty under Section 12 of the Customs Act, 1962. [para 19]***

(ii) In Collector of Customs, Bombay vs New India Industries, Bombay 1985 (21) ELT.159 (Trib), the Hon'ble Tribunal, Delhi Bench *inter alia* held as follows:

> ***Exemption - Exemption Notification reduces the rate of duty but goods continue to be dutiable - Notification 364/76-Cus. - Sections 12 and 25 (1) of the Customs Act, 1962. - Any exemption notification, such as Notification No. 364-Cus., dated 2-8-1976, in the instant case, under Section 25(1) of the Customs Act, 1962 is issued precisely because the goods are covered by the First Schedule of the Customs Tariff Act and are subjected to duty of customs. The only effect of notification issued under Section 25(1) is to reduce the effective rate of duty leviable but goods continue to be dutiable. Therefore, the issue of notification under Section 25(1) does not mean that the goods***

in question are not chargeable to levy of duty under Section 12 of the Customs Act. An exemption only suspends or eclipses chargeability which can be revived the movement the exemption is lifted or withdrawn and can be construed as chargeability under 'nil rates', if rate under Section 12 is the whole basis for chargeability [1984 (16) E.L.T. 183 (Ker.) & 1983 E.L.T. 1688 (Del.) relied on]. [paras 17 and 21]

The above decision of Hon'ble Tribunal was approved by Hon'ble Supreme Court on 25.08.1999 dismissing the appeal filed by the party against the same.

11.4. In the instant case also, the exported goods are specified in the Second Schedule to the Customs Tariff Act, 1975 as subjected to export duty; while by a Notification issued under Section 25 (1) of the Customs Act, the same were exempted. Hence, the ratio of and principles laid down in the above decisions is clearly applicable, whereby the goods have to be treated as falling within the criterion ' subject to export duty'.

11.5. Furthermore, we observe that the phrase 'subject to export duty' is used in the proviso, without any qualification/restriction such as 'other than those exempted or Nil rate', as has been used in the clause (ii) immediately preceding the proviso to Sec.54(3). It is well-settled that the words in a statute must be given their plain, natural meaning and that the Legislature, when used certain words/phrases in a given situation and not used such words/phrases in another situation, there is a conscious legislative intent in such non-usage. We further find that the appellants have also not provided any authoritative texts/support to negate the finding of the lower authority in this regard.

11.6. The wording in the statute specifies that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty. The word used in the proviso is "Shall" which conveys the mandatory prescription by the legislature, that refund of unutilized input tax credit is not to be allowed, in cases where the goods exported out of India are subjected to export duty.

12. The above being the stated position in the statute, the appellant is not entitled to claim refund of unutilized input tax credit in cases where the goods exported out of India are subjected to export duty.

13.1. The Hon'ble Supreme Court in the case of Commissioner of Cus. (Import), Mumbai Versus Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)] held that

Interpretation of statutes - Statute must be construed according to the intention of Legislature ..... Interpretation of statutes - Words in a statute when clear, plain and unambiguous and only one meaning can be inferred, Courts bound to give effect to the said meaning irrespective of consequences - In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation especially in fiscal statutes and penal statutes. .....

13.2. The Hon'ble Supreme Court (Larger Bench) in the case of Union of India V/s M/s Dharmendra Textile Processors cited at 2008 (231) E.L.T. 3 (S.C.) held that

Interpretation of statutes ..... A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

14. On a careful reading of the correct position of the statute vis-à-vis the appellant's contention, it clearly emerges that the language employed in the statute as discussed in the paras above are plain and unambiguous and it amply conveys the legislative intent.

15. The appellant, vide their letter Ref No. CCPL/GST/19-20/23 dated 16.01.2020 have added an additional ground of appeal. They have contended that the Learned AAR has erred in holding that the appellant is liable to pay IGST on iron ore imported into India in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 read with Section 5(1) of the IGST Act, 2017. We find that though mentioned as 'additional ground', it is in fact in the nature of appeal against one part of Advance Ruling, which was not appealed against/disputed in their original appeal.

16. In this regard, it would be pertinent to reproduce the Section 100 of the CGST Act, 2017;

SECTION 100. Appeal to Appellate Authority. *— (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.*

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant :

Provided *that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.*

17. We find that the AAR decision was communicated to appellant on 21.05.2019. The appeal was filed on 26.06.2019, with regard to the ruling rendered vide point (4) mentioned therein. The same was filed in time and has been answered in the preceding paragraphs. However, the additional grounds of appeal preferred by the appellant vide their letter Ref No. CCPL/GST/19-20/23 dated 16.01.2020 are barred by limitation as contained in Section 100(2) of the CGST Act, 2017 as it is filed beyond a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant. The said additional grounds of appeal filed by the appellant vide their letter Ref No. CCPL/GST/19-20/23 dated 16.01.2020 is also barred by the further extended period of limitation as contained in the proviso to Section 100(2) of the CGST Act, 2017 which provided a further period not exceeding thirty days. The said 'additional ground' has been filed on

16.01.2020 i.e. well beyond the limitation period mandated in the statute i.e. Section 100(2) of the CGST Act, 2017 as well as proviso to Section 100(2) of the CGST Act, 2017. As the additional submissions vide which the additional grounds for appeal have been preferred are hit by limitation, this Authority being bound by the statute, is not empowered to entertain the same. Hence, the said 'additional ground' is rejected on the grounds of limitation, and thereby without any need to delve into the merits of the same.

18. In view of the above discussion and observation, we pass the following order:-

ORDER

(Under Section 101(1) of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017).

For the reasons as discussed above, the Ruling given by AAR, Goa being consistent with the extant statute is maintained. The appeal dated 26.06.2019 as well as the additional grounds of appeal dated 16.01.2020 of the appellant are rejected.

Dipak M Bandekar
Member

Vasa Seshagiri Rao
Member

3 2 2020

To:

M/s Chowgule and Company Private Limited,
Chowgule House, Mormugao Harbour, Goa- 403803
(GSTIN No. **30AAACC5479J1ZP**).

Copy to:

1. The Goa State Authority for Advance Ruling, GST, Goa.
2. The jurisdictional Officer of Central Tax, Goa.
3. The jurisdictional Officer of State Tax, Goa.

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केंद्रीय जी.एस.टी. आयुक्त का कार्यालय
Received/ प्राप्त
26 FEB 2020
OFFICE OF THE COMMISSIONER OF GST
GST BHAWAN, EDC COMPLEX PATTO P