

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING  
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No.05/2024 AAAR

Date: 26.11.2024

**BEFORE THE BENCH OF**

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| Sh. Ashish Varma, I.R.S.,<br>Pr. Chief Commissioner of GST &<br>Central Excise,<br>Member, Appellate Authority for<br>Advance Ruling, Tamil Nadu | Dr. D. Jagannathan, I.A.S.,<br>Commissioner of Commercial Taxes,<br>Member, Appellate Authority for<br>Advance Ruling, Tamil Nadu |
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**Order No. AAAR/10/2024 (AR)**

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section  
101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

**Preamble**

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017 ("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
  - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
  - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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| Name and address of the Appellant   | M/s. Panasonic Life Solutions India (P) Ltd.,<br>6 <sup>th</sup> Floor, No. 86, Polyhose Towers, Anna<br>Salai, Guindy, Chennai – 600 032. |
| GSTIN or User ID  | 33AAECA2190C2Z9  |
| Advance Ruling Order against which appeal is filed  | Advance Ruling No.17/ARA/2024 dated<br>25.07.2024  |
| Date of filing appeal   | 30.08.2024   |
| Represented by  | Shri K. Sivarajan, Partner, PW & Co., LLP,<br>Shri Ankit Dawar, Partner, PW & Co., LLP, &<br>Shri Pankaj Aggarwal, AGM - Taxation          |
| Jurisdictional Authority - State  | Alandur Assessment Circle<br>Chennai (South) Division  |
| Jurisdictional Authority - Center   | Gummidipoondi Division,<br>Chennai Outer Commissionerate   |
| Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details | Yes. Payment of Rs.20,000/- (CGST-10,000/-<br>and SGST-10,000/-) made vide Challan CPI:<br>RBIS24083300537257 dated 28.08.2024.            |

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

2 The subject appeal was filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s. Panasonic Life Solutions India (P) Ltd., (hereinafter referred to as 'Appellant'). The Appellant is registered under the GST Act vide GSTIN 33AAECA2190C2Z9. The appeal was filed against the Advance Ruling No.17/ARA/2024 dated 25.07.2024 passed by the Authority for Advance ruling, Tamilnadu ('AAR') on the Application for Advance ruling filed by the Appellant.

3.1 The Appellant had applied for Advance Ruling vide application ARA-01 No.01/2024/ARA dated 12.01.2024, seeking a ruling on the following queries, viz.,

**Query 1** - In the facts and circumstances of the case, whether the transfer of title of goods stored in FTWZ Unit by the Applicant to its customers in Domestic Tariff Area (DTA) or multiple transfers within the FTWZ followed by a subsequent removal from FTWZ Unit would get covered under para 8(a) of Schedule III of the CGST Act or Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as 'the TNGST Act') and the rules made there under?

**Query 2** - If answer of the above query is No, whether Integrated Goods and Services Tax (IGST) is payable by the Applicant on goods stored in FTWZ unit and supplied to its customers in DTA unit, in addition to the customs duty payable

[i.e. Basic Customs Duty (BCD) + IGST] by the customer in DTA on removal of goods from the FTWZ unit in accordance with Section 30 of Special Economic Zone ('SEZ') Act, 2005 and read with the Customs laws?

**Query 3** – Irrespective of whether supply of goods lying in FTWZ unit to DTA customers is covered under Schedule III of the CGST Act or not, whether any reversal of input tax credit of common inputs/ input services/ Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?

3.2 The AAR vide Ruling No.17/ARA/2024 dated 25.07.2024 ruled as follows :-

- (i) Yes. The activity of the transfer of title of goods stored in FTWZ Unit by the applicant to its customers in Domestic Tariff Area (DTA) or multiple transfer within the FTWZ, will get covered under para 8(a) of Schedule-III of the CGST/TNGST Acts, 2017.
- (ii) This query is not answerable, since the query at Sl.No.(i) is answered in the affirmative.
- (iii) In terms of the amended Section 17(3) of the CGST Act, 2017, and the rules made thereunder, the applicant becomes liable to reverse the proportionate ITC on common inputs/capital goods/services availed, if any.

3.3 Aggrieved over the said ruling pronounced by the AAR, the Appellant has filed the instant appeal. Under the grounds of appeal as submitted by the Appellant, they have put forth the following points in support of their defence, viz.,

A.1 The AAR has erred in holding that the transfer of title of goods stored in FTWZ Unit by the Applicant to its customers in Domestic Tariff Area (DTA) or multiple transfers within the FTWZ followed by a subsequent removal from FTWZ Unit are covered under para 8(a) of Schedule III of the CGST Act.

A.2 The AAR has misinterpreted the provisions of paragraph 8(a) of Schedule III of the CGST Act, in the impugned ruling regarding the supply of goods from a FTWZ to the DTA. The fundamental issue lies in the incorrect interpretation that the FTWZ qualifies as a warehouse in accordance with the provisions of the Customs Act, and that the goods stored and transferred within the FTWZ should be treated as "warehoused goods" as per the Customs provisions.

A.3 The AAR's interpretation of the SEZ Act's linkage with the Customs Act is incorrect. While an FTWZ is indeed considered as a customs station under the Customs Act, there is a crucial difference between a warehouse, a customs area, and a customs station. According to Section 2(11) of the Customs Act, a customs area includes both customs stations and warehouses. However, as defined under Section 2(43) of the Customs Act, a warehouse is not included in the definition of customs station. Therefore, even though Section 2(zd) of the SEZ Act borrows definitions from the Customs Act, being a customs station / customs port alone does not make an FTWZ a warehouse in accordance with the Customs Act.

A.4 Therefore, it is essential to distinguish between an FTWZ and a customs-bonded warehouse. While the FTWZ is recognized under the SEZ Act and consequently considered as Customs station, it does not automatically qualify as a warehouse under the Customs Act.

A.5 Further the AAR's findings in para 19 of the impugned ruling that FTWZ constitutes a 'warehouse' based on the activity of warehousing undertaken, is incorrect.

A.6 Furthermore, the Customs warehousing regulations provide for a comprehensive framework for the management and operation of Customs warehouses, whereas these regulation do not apply on goods stored in FTWZ, for which the provisions of SEZ Act and Rules provide guidelines for the licensing, management and operations of FTWZ unit.

A.7 Therefore, the AAR's findings that the FTWZ is akin to a customs-bonded warehouse, thereby bringing the goods stored within it under the purview of paragraph 8(a) of Schedule III, is flawed.

A.8 That the appellant would like to highlight the fact that their reliance on the ruling in the case of Haworth India (P) Ltd., is valid, as the said ruling has not been set aside by the Appellate Authority for Advance Ruling, Tamilnadu, but had only remanded the case, as the AAR had failed to consider the appellant's submission in its entirety.

A.9 Accordingly, the appellant reiterated the detailed submissions made before the AAR and concluded that in view of the foregoing, it is evident that the AAR has misinterpreted the provisions in concluding that the supply of goods stored in the FTWZ falls under para 8(a) of Schedule III, and therefore the impugned ruling should be set aside.

B.1 The AAR has erred in not addressing the Query No.2, on the basis that they have answered Query No.1 in the affirmative, and therefore there is no need to respond to Query No.2, as it starts with the phrase **"If the answer to the above at (i) is no, ...."**.

B.2 Though the AAR did not directly answer Query No.2, they are indirectly concurring with the point that IGST would not be applicable to supplies within the FTWZ.

B.3 While the inapplicability of GST on such supplies is undisputed, the disputed conclusion is with respect to the exclusions under paragraph 8(a) of Schedule III which is incorrect, and as the same is covered under paragraph 8(b) *ibid*.

B.4 In para 19 of the impugned ruling, the finding of the AAR that 8(b) of the Schedule III covers activities in the nature of 'High Sea sales', is misplaced as the same covers not only 'High Sea Sales', but supplies by way of transfer of title of goods which is dispatched from the port of origin located outside India but before clearance for home consumption.

B.5 In this regard, the appellant reiterated and resubmitted the submissions made already before the AAR.

B.6 In light of the above discussions, the appellant reiterated that supply of goods lying in FTWZ unit by Panasonic shall be subject to tax at the time of removal of goods by the end customer in terms of Section 30 of the SEZ Act read with proviso to Section 5(1) of the IGST Act, read with Section 3 of the Customs Tariff Act. Therefore, supply made by the appellant shall be deemed not be a 'supply' by virtue of para 8(b) of Schedule III of the CGST Act.



C.1 The AAR has erroneously concluded that a reversal of ITC is required as the supply of goods from the FTWZ unit to DTA customers falls under paragraph 8(a) of Schedule III of the CGST Act.

C.2 The aforesaid finding is incorrect because it misinterprets the scope and application of the amendment to Section 17(3) of the CGST Act. The AAR has applied a blanket interpretation by concluding that all transactions under paragraph 8(a) of Schedule III necessitate a reversal of ITC, which does not align with the specific amendments made to the CGST Act and CGST Rules.

C.3 The explanation to Section 17(3) specifies that only certain prescribed transactions from paragraph 8(a) are required to be included in the value of exempt supplies. In particular, explanation 3 to Rule 43 of the CGST Rules provides that the transactions to be included are those involving the supply of goods from Duty-Free Shops ("DFS") at arrival terminals in international airports to incoming passengers. This clearly indicates that not all transactions falling under paragraph 8(a) should be treated as exempt supplies for the purpose of ITC reversal.

C.4 In this regard, the appellant reiterated and resubmitted the submissions made already before the AAR, and concluded that irrespective of whether or not the FTWZ or the SEZ is covered under paragraph 8(a) of Schedule III, the Appellant would not be required to reverse ITC and therefore, the impugned ruling to the extent it ignores the amendments in entirety and aforesaid interpretation, is incorrect and liable to be set aside.

3.4 Accordingly, in respect of the queries raised by them, the appellant were of the viewpoint that,

(1) FTWZ does not qualify as a customs warehouse under the provisions of the Customs Act. Thus the transactions are not covered under para 8(a) of Schedule III.

(2) FTWZ is not a customs warehouse, and thus, it does not fall under Para 8(a) of Schedule III. However, given that supplies undertaken prior to the goods crossing the customs frontiers of India are not taxable as also observed in the impugned ruling, the said transaction is covered under Para 8(b) of Schedule III, which addresses the supply of goods by way of transfer of title before home consumption.

(2) The restriction on the availment of ITC under Section 17(3) of the CGST Act concerning supplies covered under Para 8 of Schedule III applies only to DFS in terms of Explanation 3 to Rule 43 of CGST Rules. Since the instant transaction is not a DFS supply, there is no requirement for reversal of ITC.

### **PERSONAL HEARING**

4.1 Shri Pankaj Aggarwal, AGM - Taxation alongwith Shri K. Sivarajan, Partner, PW & Co., LLP, Mandaveli and Shri Ankit Dawar, Partner, PW & Co., LLP, Gurgaon, the authorized representatives (AR) of M/s.Panasonic Life Solutions India (P) Ltd., appeared for the Personal Hearing held on 03.10.2024. The AR reiterated the submissions made by them in the 'Grounds of Appeal' filed along with the application. They furnished a synopsis of the factual background and the appellant's submissions alongwith a paper-book containing the relevant legal provisions, instructions, case laws etc.

4.2 The AR stated that as per Section 7(2) of the CGST Act, 2017, activities or transactions as specified in Schedule III of the Act shall be treated neither as a supply of goods nor a supply of services. The AR stated further that paragraphs 8(a) and 8(b) to Schedule III of the Act were inserted in 2019, which was deemed to effective from 1.07.2017 onwards. The AR reiterated that alongwith the said amendment, an 'Explanation 2' was also inserted which provides that for the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962. Further, the definition of 'warehouse' as in Section 2(43) of the Customs Act means a public warehouse licensed under section 57, or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A.

4.3 Likewise, the definition of 'Customs Area' as in Section 2(11) of the Customs Act, 1962, was also amended during 2017 to include the phrase 'or a warehouse' to the 'area of Customs station' which already existed. 'Customs Station' in turn is defined under Section 2(13) of the Customs Act, which means any 'customs port' or 'land customs station'. On the other hand, as per Section 53 of the SEZ Act, 2005, a Special Economic Zone is deemed to be 'port' under section 7 of the Customs Act. Accordingly, the AR contended that a FTWZ which forms part of SEZ, is to be treated as a 'port' and not as a 'warehouse' and therefore the instant transaction does not get covered under paragraph 8(a) of Schedule III. They further stated that the findings of the AAR is incorrect to that extent, and that it ideally gets covered under paragraph 8(b) of Schedule III that talks about supply of goods by endorsement of documents of title of the goods, before clearance for home consumption.

4.4 Regarding the second query relating to supply of goods to its customers in DTA unit, the AR stated that the same was not answered by the AAR in view of the fact that the first query was answered in the affirmative. The AR explained in detail about the legalities involved in the instant issue, and requested for a ruling on the same.

4.5 As regards the third query in relation to ITC availment in respect of such transactions, the AR contended that the AAR has considered only the amendment to Section 17(3) of the CGST Act. Whereas, they have failed to take note of the parallel amendment in the CGST Rules, i.e., 'Explanation 3' to Rule 43 of the CGST Rules, 2017, wherein it has been made clear that the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act, shall be the value of supply of goods from Duty Free Shops (DFS) at arrival terminal in international airports to the incoming passengers. The AR therefore reiterated that as far as paragraph 8(a) of Schedule III of the Act is concerned, proportionate reversal of ITC is warranted only in respect of the transactions involving DFS and not in general.

4.6 The Members then requested the AR to furnish sample copies of the documents in relation to the issues discussed above, viz., the document for receipt of goods into FTWZ, the document for transfer of title within FTWZ, the document for movement of goods from FTWZ to another FTWZ or to a customs bonded warehouse, the document when the goods are cleared to DTA, etc. The AR stated that the requisite documents are not readily available on file and that the same would be furnished latest by 08.10.2024. Accordingly, the AR requested the Members to consider the submissions made by them in this regard, and to modify the ruling of AAR to that extent.

4.7 The appellant vide their letter dated 8.10.2024 sought extension of one more weeks' time to furnish the required documents. As undertaken, the appellant vide their letter dated 15.10.2024 furnished sample copies of the documents called for

during the personal hearing. Further, under the said letter the appellant reiterated that the AAR has not addressed Query 2 under the premise that they have answered Query 1 in the affirmative. In this regard, as highlighted by them during the personal hearing, they have already submitted the detailed legal grounds in para 2 of 'Grounds of Appeal', and requested the authorities to take the same into consideration. Further, the appellant stated that they wish to draw attention to the 'flow of transactions' (para 6 to 18) as submitted in the appeal, as per which there are three categories of outward supply from FTWZ unit, i.e., (i) Supply to customer in DTA, (ii) Supply to customer in DTA but having a place in FTWZ unit, and (iii) Supply to customer located outside India. Accordingly, they enclosed sample copies of documents in relation to the category of transactions referred above, including the documents in relation to import of goods from outside India into FTWZ unit, viz., copy of invoice & packing list, bill of entry for importing goods into FTWZ unit, Form-13, Seaway bill and Delivery Order. They also enclosed the relevant pages of 47<sup>th</sup> GST Council meeting as referred by them in para C-4 of the appeal to clarify that the amendment regarding restriction for availing ITC in terms of Section 17(3) of CGST Act applies only to supplies by Duty Free Shops. Further, in relation to the aforesaid submissions, they requested for another opportunity to explain the same, before the appellate authorities take any further decision.

4.8 As requested, the appellant was accorded another opportunity of hearing on 07.11.2024, and Shri K. Sivarajan, Partner, PW & Co., LLP, Mandaveli, the authorized representative (AR) of M/s.Panasonic Life Solutions India (P) Ltd., appeared for the Personal Hearing. The AR briefly summarized the submissions made by them already during the personal hearing held on 03.10.2024. The AR further stated that as undertaken, the sample copies of the documents sought for by the Members during the hearing on 03.10.2024, have been furnished under the appellant's letter dated 15.10.2024.

4.9 The AR reiterated that SEZ is a port area and to this effect, the AR furnished a screen-print of the DGFT portal, wherein on being prompted with the Port code 'TNCJJ6', the Port name is shown as 'J.Matadee Free Trade Zone SEZ Mannur Tamilnadu', and the Location type is shown as 'SEZ'. The AR therefore stated that the goods stored therein cannot be considered as 'warehoused goods' in the strict sense of the term, as SEZ warehouses are not included under the Customs Act.

4.10 Further, the AR furnished a copy of the FAQ on SEZ Filing (Part-I) by ICEGATE, and he invited the attention of the Members to Query No.9, i.e., 'What are the types of BE available for SEZ in ICEGATE 2.0 ?'. The AR explained that the reply to the said query states that "Z" type Bill of Entry is to be filed for importing goods from Foreign Territory to SEZ unit, which is similar to that of a Warehouse/Into-Bond Bill of Entry filed at Customs port. The AR further stated that point Nos. (iii) and (iv) of the 'IGM and Transshipment Related features' of the said reply, talks about the transshipment permission for moving the cargo to SEZ from gateway port, which goes to prove that movement of goods to SEZ is considered as 'Transshipment' process.



4.11 The AR then explained in detail the nature of various documents furnished under the appellant's letter dated 15.10.2024. The Members requested the AR to furnish a copy of the original Bill of Entry for importing the goods into FTWZ unit in respect of the specific transaction referred to in B.1 – Copy of Invoice (No.PSFSIN/2324/C0073 dated 19.12.2023) and B.2 – Bill of entry filed by the Customer (No.2031641 dated 30.12.2023), of the Annexure to appellant's letter dated 15.10.2024. The AR undertook to furnish the same, latest by 11.11.2024.

4.12 He further stated that the relevant extract of the 47<sup>th</sup> Council meeting agenda has also been enclosed with the letter, from which it could be seen that only the transactions in relation to 'Duty Free Shops' attract reversal under Section 17(3) of the CGST Act, and not the transactions under para 8(a) per-se, of the Schedule III of the CGST Act, 2017.

4.13 As undertaken during the personal hearing held on 07.11.2024, the appellant furnished the documents called for through mail dated 11.11.2024, viz., the Invoice and Packing List No.IJP23110277 dated 08.11.2023, Bill of Lading No.015DX22880, Bill of Entry for Warehousing No.1026545 dated 08.12.2023, for receipt of goods into FTWZ, and Commercial Invoice & Packing List No. PSFSIN/2324/C0073 dated 19.12.2023 and Bill of Entry for Home consumption (SEZ to DTA unit) No.2031641 dated 30.12.2023 towards supply of goods to a DTA unit.

### **DISCUSSION AND ANALYSIS**

5.1 We have carefully considered all the material available on record, the applicable statutory provisions, the 'Grounds of Appeal' furnished by the appellant, the submissions made during the personal hearings held on 03.10.2024 and 07.11.2024, the documents furnished through their letter dated 15.10.2024 and through their mail dated 11.11.2024.

5.2 We observe that in the instant case, the moot point that requires attention, is as to whether the transfer of title of goods stored in FTWZ by the appellant to its customers in DTA or multiple transfers within the FTWZ, before the goods are actually cleared into DTA for home consumption, gets covered under paragraph 8(a) or under paragraph 8(b) of Schedule III of the CGST Act, 2017. For facilitation, the relevant provisions are reproduced as under :-

*8(a) Supply of warehoused goods to any person before clearance for home consumption;*

*8(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”;*

5.3 We note from the above that the appellant's contentions revolves basically around the concept that the expression 'warehoused goods' used in paragraph 8(a) of Schedule III of the CGST Act, 2017, carry the meaning as assigned to it in the Customs Act, 1962, whereby only a public warehouse licensed under section 57, or a private



warehouse licensed under section 58, or a special warehouse licensed under section 58A, are covered, and not the FTWZ warehouse referred by the appellant in the instant case.

5.4 On the other hand, the appellant reiterates that paragraph 8(b) of Schedule III of the CGST Act, 2017, applies to their case, and in support of their stand, the following points have been put forth by the appellant under para B.5 of the grounds of appeal, i.e.,

- *In the instant case, we would like to reiterate that on transfer of title of goods by Panasonic India, goods shall be either cleared from the FTWZ unit by the customer or further transfer of title can happen while the goods are lying in FTWZ. It is important to note that the delivery of goods by Panasonic India gets completed within the FTWZ unit itself.*
- *Further, in case of clearance of goods to the DTA unit (as the case may be), the end customer shall file the BOE for home consumption (SEZ to DTA unit) and pay the applicable customs duty on the value at which such goods are being procured by such DTA unit (as the case may be).*
- *In this regard, we would like to draw your reference to para 8(b) of Schedule III of the CGST Act, which provided that supply of goods by the consignee to any person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall not be treated as a supply of goods.*
- *Given the facts of the case, we are of the view that para 8(b) is squarely applicable in the instant case, as Panasonic India transfers the title of the goods to the customer while the goods are lying within the FTWZ unit, i.e., before final clearance for home consumption by the end customer. Such transfer should be treated as akin to transfer through endorsement before clearance as envisaged in the said para.*

5.5 Under the facts and circumstances of the instant case, we observe that 'transfer of title' of goods lying in FTWZ takes place admittedly as per the 'Statement of facts' of the case furnished by the appellant, whereas the provisions of 8(b) of Schedule III of the CGST Act, 2017 talks about "Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods". It is to be noted here that the above phrase specifically refers to the term 'by endorsement of documents' in absolute terms, and not just 'transfer of title to the goods' in general. We are therefore of the opinion that the term 'by endorsement' assumes significance in the context of the instant case.

5.6 In this regard, it is seen from the 'Principles of Insurance and Banking' authored by Dr. S.S. Kundu, the term '**Endorsement**' and its properties has been discussed as below :-

**"1.9 ENDORSEMENT**

*The word 'endorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, **the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein**. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an*

endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

#### **Essentials of a valid endorsement**

The following are the essentials of a valid endorsement:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called allonge. It should usually be in ink.
2. It must be made by the maker or holder of the instrument. A stranger cannot endorse it.
3. It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.
4. It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But intention to transfer must be present.

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5.7 Further, we notice that the latter part of the phrase, '**documents of title to goods**' also carries a specific meaning and as per Section 2(4) of the Sale of Goods Act, 1930, the term 'documents of title to goods' is defined as below :-

"(4) "document of title to goods" includes a **bill of lading**, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, **either by endorsement or by delivery**, the possessor of the document to transfer or receive goods thereby represented;"

5.8 On a conjoint reading of the phrases referred above, along with its properties and specifications, i.e., "**by endorsement**" and "**documents of title to the goods**", it becomes clear that the activity relating to "Supply of goods, **by endorsement of documents of title to the goods**" as enumerated under para 8(b) of Schedule III of the CGST Act, 2017 refers to the mode of transaction for a specific activity, as against the practice adopted for normal sale transactions. Further the second part of phrase forming part of paragraph 8(b), i.e., "**after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.**", points to a situation when the goods lie midway, or, are in transit. Ideally, when a 'High Sea Sale' takes place, 'Bill of lading' normally becomes the crucial document that could be subjected to endorsement. We are of the opinion that this is precisely the reason as to why paragraph 8(b) of Schedule III is conceptually linked to 'High Sea Sale'.

5.9 Further, we find that the appellant have stated in para 14 of the 'Statement of facts', filed along with the application for appeal, as follows :-

"Further, upon finalisation of customer, **the Appellant would raise a tax invoice (without tax) on the Domestic Tariff Area ("DTA") customer in foreign currency. In**

case of supply to overseas entity, the Appellant issues an export invoice as export of goods without payment of tax under Letter of Undertaking ('LuT'). The said invoices also specify the fact that the goods are being supplied from FTWZ unit (vis. of KILPL) and mentions that it is 'On Account' of supply by the Appellant."

In addition to the same, the appellant have stated in the 'Grounds of Appeal' as part of para B.5, as follows :-

*Given the facts of the case, we are of the view that para 8(b) is squarely applicable in the instant case, as Panasonic India **transfers the title** of the goods to the customer while the goods are lying within the FTWZ unit, i.e., before final clearance for home consumption by the end customer. Such transfer should be treated as akin to transfer through endorsement before clearance as envisaged in the said para.*

5.10 From the above, it becomes evident that the appellant raises invoices to transfer the title of the goods to the customer while the goods are lying within the FTWZ unit in the instant case, and that they are not into endorsement of any 'document of title to goods' in the nature of a bill of lading, dock-warrant, warehouse keeper's certificate, multimodal transport document etc. Further, the usage of the statement by the appellant themselves to the effect that "Such transfer should be treated as akin to transfer through endorsement" proves the point that a straightforward 'transfer of title' through an invoice happens between the appellant and the customer in respect of the transactions in question. This apart, on perusal of the sample copy of Invoice No.FSFSIN/2324/C0073 dated 19.12.2003 (Documents in relation to supply of goods to customer in DTA) furnished by the appellant through their letter dated 15.10.2024, it is seen that the imported goods lying in FTWZ are sold to a customer in Faridabad through a commercial invoice where no 'endorsement' of any kind is made or available. The document in the instant case being a commercial invoice, the same is to be treated as a proper document for sale, and it cannot be treated as a case of "Supply of goods, by endorsement of documents of title to the goods", by any means whatsoever. Accordingly, it becomes clear that the transaction involved in the instant case is to be considered as a mere 'transfer of title', and thereby it does not get covered under paragraph 8(b) of Schedule III of the CGST Act, 2017, as it is meant to cover a specific situation/activity.

5.11 Once the application of paragraph 8(b) of Schedule III of the CGST Act, 2017 to the instant case is effectively ruled out, it becomes imperative to examine as to whether the provisions of paragraph 8(a) of Schedule III of the CGST Act, 2017, viz., "Supply of **warehoused goods** to any person before clearance for home consumption", applies to the instant case or not.

5.12 In this regard, the explanation 2 to Schedule III of the CGST Act, 2017 that runs as below, merits attention, i.e.,

**'Explanation 2.—For the purposes of paragraph 8, the expression "**warehoused goods**" shall have the same meaning as assigned to it in the Customs Act, 1962.'**

As per Section 2(44) of the Customs Act, 1962,

*"(44) **'warehoused goods'** means goods deposited in a warehouse"*

And, as per Section 2(43) *ibid*,

*"(43) **'warehouse'** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A."*

In this regard, we observe that as rightly pointed out by the taxpayer, the definition of 'warehouse' as in the Customs Act, 1962, gets restricted to the Customs bonded warehouses under Sections 57, 58 and 58A of the Act, *ibid*.

5.13 At this juncture, it becomes imperative to take note of the fact that while SEZ is considered as a duty free enclave in simple terms, FTWZ is one category of SEZ that specializes in warehousing and trading operations. The definitions of SEZ and FTWZ under the SEZ Act, 2005 are reproduced for facilitation, viz.,

*"2(za) **'Special Economic Zone'** means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and **Warehousing Zone**) and includes an existing Special Economic Zone;"*

*"2(n) **'Free Trade and Warehousing Zone'** means a Special Economic Zone wherein mainly trading and **warehousing** and other activities related thereto are carried on;"*

Further, Sections 3 and 6 of the SEZ Act, 2005, contains the following provisions involving the term/activity of 'warehousing', viz.,

*"3. Procedure for making proposal to establish Special Economic Zone.—(1) A Special Economic Zone may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for both or as a Free Trade and **Warehousing Zone.**"*

*"6. Processing and non-processing areas.—The areas falling within the Special Economic Zones may be demarcated by the Central Government or any authority specified by it as—*

- (a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or*
- (b) the area exclusively for trading or **warehousing** purposes; or*
- (c) the non-processing areas for activities other than those specified under clause (a) or clause (b)."*

5.14 And, as far as the provisions of SEZ Rules, 2006, are concerned, the following provisions that involve the term 'warehouse', attract attention, viz.,

## **27. Import and Procurement. -**

*(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or*



*Electronic Hardware Technology Park unit or Biotechnology Park unit, or **warehouse** all type of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items.*

*27 (7) The goods already imported or shipped or arrived before the issue of Letter of Approval shall be eligible for duty free clearance provided customs duty has not been paid and goods have not been cleared from Customs or cleared and placed in the **Bonded Warehouses**.*

*28 (4) The Unit or Developer may also procure goods required for the authorized operations, without payment of duty, from International Exhibitions held in India or from **bonded warehouses** set up under the Foreign Trade Policy and under the Customs Act in the Domestic Tariff Area;*

5.15 In its most fundamental sense, a bonded warehouse is one of the types of warehouses sanctioned by customs authorities, specifically designed to house imported goods without the immediate burden of import duties or taxes. This allows business enterprises to store their goods without paying duties until they are ready to be released into the domestic market. On the other hand, in non-bonded facilities, duties on the items imported and kept, are already paid for. Accordingly, the bonded warehouses and unbonded warehouses differ significantly in terms of tax status.

5.16 However, it is to be noted here that warehouses as discussed within the legal framework of SEZ/FTWZ, are nothing but 'bonded warehouses', very much akin to 'customs bonded warehouses'. Further, we observe that there is no inconsistency between the provisions of the Customs Act, the SEZ Act and the SEZ Rules with respect to warehousing. As per rule 22 of the SEZ Rules, every SEZ is required to execute Bond-cum-Legal Undertaking ("BLUT") in Form 'H' of the SEZ Act with the Customs authorities to avail the benefit of duty-free clearance. It is to be noted here that though the Form 'H' is prescribed under the provisions of SEZ Act and Rules, the 'BLUT' executed by any SEZ is presented before the Customs authorities as the duty benefits provided for, are related to the Customs Act. The fact that the BLUT form is accepted and signed by the Officer of Development Commissioner/Joint/Deputy Development Commissioner, and also by the Officer of Joint/Deputy/Assistant Commissioner of Customs, corroborates the fact that the procedural requirement under the SEZ Act and the Customs Act travel together without any inconsistency. Further, the 4<sup>th</sup> para of the BLUT form and para 3 of the Conditions of BLUT form, reads respectively, as below :-

*"And whereas the obligors can clear duty free imported goods from ports or airports or inland container depots or specified land custom stations or **customs warehouse** or international exhibitions held in India, as the case may be, for admission into the Special Economic Zone"*

*"3. We, the obligors shall furnish to the **Assistant Commissioner of Customs** or **Deputy Commissioner of Customs**, as the case may be, at port or air-port or inland container depot or land customs stations or **a warehouse** evidence to his*

satisfaction within a period of forty-five days from the date of dispatch from any warehouse or unit that the said goods have duly arrived in our unit in the Special Economic Zone.”

It could be seen from the above that that an intimation is required to be furnished to the Assistant/Deputy Commissioner of Customs, about the arrival of goods in SEZ, and that the 'BLUT' form refers to 'Customs warehouse', 'a warehouse' and 'any warehouse', and thereby all types of warehouses stand referenced.

5.17 Further, we notice that the provisions of Rule 28(4) of the SEZ Rules, 2006, reads as,

*“28 (4) The Unit or Developer may also procure goods required for the authorized operations, without payment of duty, from International Exhibitions held in India or from bonded warehouses set up under the Foreign Trade Policy and under the Customs Act in the Domestic Tariff Area;”*

Whereby, it could be seen that the legal provisions, identify and accommodates both types of bonded warehouses, whether set up under the Foreign Trade Policy (warehouses under SEZ/FTWZ), or under the Customs Act (Customs bonded warehouses). Both the customs bonded warehouses and the warehouses under the duty-free zones are special warehousing regimes that offer logistics solutions tailored to international trade, each with their own advantages and benefits. While the customs warehouse stands out for its focus on secure warehousing and efficient inventory management, the warehouses in duty-free zones are notable for its commercial freedom and tax advantages. In effect, both the types of bonded warehouses offer financial respite to the business houses in the form of tax deferral.

5.18 It is to be noted here that while the terms 'warehouse' and 'warehoused goods' have been defined under Section 2(43) and 2(44) of the Customs Act, 1962, the same have not been defined under the SEZ Act, 2005. However, Section 2 of the SEZ Act, 2005, that contains the definition of certain words/expressions under the said Act, also carries a provision under Section 2(zd) of the SEZ Act, which states that all other words and expressions used but not defined in this Act, shall have the meanings respectively assigned to them in those Acts, and it reads as under :-

*“(zd) all other words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the Customs Act, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts.”*

5.19 In this regard, it is to be highlighted here that it is quite normal that any definition provided under any Act would be naturally designed to serve its own purpose, and not with an intent to cater to any other Act or situation. We note that this is precisely the reason, the 'overriding' nature the SEZ Act, 2005 over any other law, through Section 51 of the Act, *ibid*, comes in to take care of any such

inconsistencies, under any other law. For facilitation, the provisions of Section 51 is reproduced as under:-

***"51. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."***

5.20 We observe that the issue of Public Notice 18/2015 dated 23/01/2015 by the Commissioner of Customs, Chennai VIII (General) on the subject **"Integration of SEZ cargo delivery through SEZ online with Customs EDI System (ICES)"** The relevant portion of para 3.5 of the said public notice reads thus :- *"The present procedure of verification of cargo, on arrival at SEZ by the Authorized Officer of SEZ, assessment, examination, granting Out of Charge (OOC), warehousing by SEZ and issue of Re-warehousing certificate to Customs will also continue till the full-fledged implementation of electronic procedure"*. Further, under the 'List of SEZ code with SEZ name in ICES', enclosed as Annexure to Public Notice 18/2015, J. Matadee Chennai Free Trade Zone figures at Sl.No.113 with Port Code **INCJJ6**.

Later, by way of Circular No.19/2016-Customs dated 20.05.2016, on the subject **"Allotment of Warehouse Code for Customs Bonded Warehouses"**, the Central Board of Excise and Customs in para No.1 stated as follows :- *"Please refer to the changes made in the Finance Act, 2106 to shift towards record based control with respect to Bonded Warehouses. It is proposed that each warehouse be allotted a unique warehouse code so that importers can declare the warehouse in which goods shall be deposited, at the into-bond bill of entry stage."* It has also been explained in the Annexure to the said Circular about the generation of **eight digit Warehousing Code**, whereby the first 4 characters indicates the EDI port of registration, the fifth character to denote the type of warehouse and the sixth, seventh and eighth characters are running numeric serial numbers.

The User Manual on 'SEZ Web Forms' by ICEGATE 2.0 prescribes two types of Bill of Entry, viz., 1. **Z type BOE** :- SEZ BE (FTA-SEZ) and 2. **T type BOE** :-SEZ (DTA Sales – Trading). The Manual further prescribes that **'General and Warehouse details'** pertaining to the import is required to be provided in Segment-1 of the said web form.

This apart, the Directorate General of Systems and Data Management through para No.2 of the Advisory No.32/2023 dated 23.12.2023, has stated as follows :- *"In this regard, modifications have been made in the System, for mandatory declaration of warehouse code by the importer at the time of filing into-bond bill of entry. A check has also been placed in the System that at that time of clearance of warehouse bill of entry, the warehouse code mentioned should be active and valid."*

5.21 On perusal of the documents towards import of the goods in question, furnished by the applicant vide their mail dated 11.11.2024, especially the Bill of Entry vide Sl.No.1026545 dated 08.12.2023 in the instant case which is an into-bond Bill of Entry, it is seen that the same has been filed as **"Bill of Entry for Warehousing"**



where under the importer's details, the SEZ Entity has been referred as M/s.Kerry Indev Logistics PVT LTD., Unit FTWZ, Survey No.20-3A, 20-2, 22-1B, 20-1A, 21-2, Warehouse SG13-16 & SG31, J Matadee FTWZ SEZ, Mannur & Valarpuram Village, Kanchipuram Dist., Sriperumbudur Taluk – 602105, and the client (Indian) is referred as M/s.Panasonic Life Solutions India (P) Ltd.

Likewise, on perusal of another into-bond Bill of Entry No.4831632 dated 02.08.2024 furnished by the applicant through their letter dated 15.10.2024, it is seen that Bill of Entry type has been mentioned as 'Z', and that the Port code is mentioned as 'INCJJ6'. And at row G 'WH' of 'Part-I – Bill of Entry Summary' meant for warehouse details, the eight digit warehouse code has been mentioned as 'CJJ6 Z 014' in column 4.

5.22 Accordingly, it could be seen that the allotment of eight digit warehouse code for Customs Bonded warehouses in effect extends to other bonded warehouses under SEZ/FTWZ as well, and the scheme of 'Integration of SEZ cargo delivery systems through SEZ online with Customs EDI System (ICES)' further proves the fact that the procedural requirement under the SEZ Act and the Customs Act are inextricably interwoven that they are bound to travel together without any inconsistency. Even in the event of considering the definition of 'warehouse' as in the Customs Act, 1962, as an anomaly or inconsistency, the overriding effect that Section 51 provides to the SEZ Act, 2005 obviates the anomaly, if any. Alternatively, it can be said that application of the provisions of 8(a) of Schedule III of the CGST Act, 2017 is to be considered as the provision that is most akin to the instant transaction, and the provisions of 8(b) of Schedule III of the Act, *ibid*, stands effectively ruled out as it is meant to cover a specific situation/activity, i.e., by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India".

5.23 Under these circumstances, we are of the opinion that a 'Free Trade Warehousing Zone', as the name suggests, is a bonded premises providing warehousing facility, much in parity with the bonded warehouse under the Customs Act. Further, when the goods are imported and brought into a FTWZ unit, they are basically warehoused first and then traded or subjected to other authorized operations as the case may be. We notice that the appellant's queries for advance ruling in the instant case is restricted to the first stage, i.e., when the imported goods are supplied to any person before they are cleared for home consumption, while they still remain warehoused. Accordingly, we are of the considered opinion that the provisions of 8(a) of Schedule III of the CGST Act, 2017, viz., "Supply of warehoused goods to any person before clearance for home consumption" applies to the instant case, and we do not find any reason to modify the ruling pronounced by the AAR in relation to Query No.1 of the Advance Ruling No.17/ARA/2024 dated 25.07.2024.

5.24 As far as Query No.2 of the appellant's application for advance ruling is concerned, we notice that the same reads as, *"If answer of the above query is No, whether Integrated Goods and Services Tax (IGST) is payable by the Applicant on goods stored in FTWZ unit and supplied to its customers in DTA unit, in addition to the customs duty payable [i.e. Basic Customs Duty (BCD) + IGST] by the customer in DTA*



on removal of goods from the FTWZ unit in accordance with Section 30 of Special Economic Zone ('SEZ') Act, 2005 and read with the Customs laws?". It may be seen from the above that question starts with the rider "If answer of the above query is No", which clearly brings in the proposition that providing a ruling to the operational part of this query depends very much on the ruling provided to Query No.1.

5.25 Having held that the provisions of 8(a) of Schedule III of the CGST Act, 2017, applies to the instant case, as in para 5.23 above, we are of the opinion that the same would tantamount to answering the Query No.1 in the affirmative. Accordingly, we are in agreement with the ruling pronounced by the AAR in respect of Query No.2. i.e., "This query is not answerable, since the query at Sl.No.1 is answered in the affirmative.", and therefore we are of the opinion that the said ruling does not require any modification.

5.26 Query No.3 seeks a ruling as to whether any reversal of ITC is warranted in the instant case in view of the recent amendment to Section 17(3) of the CGST Act, 2017, which reads as, "*Irrespective of whether supply of goods lying in FTWZ unit to DTA customers is covered under Schedule III of the CGST Act or not, whether any reversal of input tax credit of common inputs/input services/Capital goods is required at the hands of the Applicant in terms of recent amended Section 17(3) of the CGST Act?*". We notice that the AAR had ruled that in terms of the amended Section 17(3) of the CGST Act, 2017, and the rules made thereunder, the applicant becomes liable to reverse the proportionate ITC of common inputs/capital goods/services availed, if any.

5.27 In this regard, we observe that the provisions of Section 17(2) and 17(3) that talks about apportionment of credit in such situations when a taxable person effects taxable supplies as well as exempted supplies, reads as below,

*"(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

*(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."*

5.28 Prior to the amendment to Section 17 of the CGST Act, 2017, carried out under the Finance Act, 2023 (8 of 2023), the explanation to sub-section (3) of Section 17, read as follows :-

*"Explanation.— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule;"*

Under Section 139 of the Finance Act, 2023 (8 of 2023), an amendment to Section 17 of the CGST Act, 2017 has been proposed as follows :-

*"In section 17 of the Central Goods and Services Tax Act,—*

*(a) in sub-section (3), in the Explanation, for the words and figure "except those specified in paragraph 5 of the said Schedule", the following shall be substituted, namely:—*

*"except,—*

*(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and*

*(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule."*

The said amendment came into force from 1.10.2023 onwards by way of Notification No.28/2023-Central Tax dated 31.07.2023, whereby apart from paragraph 5 of Schedule III, the activities or transactions referred to in clause (a) of paragraph 8 were also to be treated as "exempt supplies" and not as "non-supplies". The moot point for consideration here is that once an activity/transaction is considered as an 'exempt supply', it attracts the proposition of apportionment of credit, as provided for under Section 17(2) of the CGST Act, 2017, whereby the credit on input tax that is attributable to exempt supplies is required to be reversed. Accordingly, the AAR in the impugned ruling No.17/ARA/2024 dated 25.07.2024 had held that the appellant becomes liable to reverse the proportionate ITC of common inputs/capital goods/services availed, if any.

5.29 At this juncture, we notice that the phrase "**as may be prescribed**" in clause (ii) of the Explanation to sub-section (3) of Section 17, as above, carries significance, as it necessitates a recourse to the CGST Rules made thereunder. However, we observe that the AAR has erred in not taking this aspect into consideration, before pronouncing the ruling on this issue. In this regard, we notice that parallel to the amendment to Section 17 of the CGST Act, 2017, an amendment (on the recommendations of the GST Council), has also been made to CGST Rules, 2017, by way of insertion of "Explanation 3" after sub-rule (5) to Rule 43 of the Rules, *ibid*, under point No.7 of the Notification No.38/2023 – Central Tax dated 04.08.2023, that reads as below :-

*"7. In the said rules, in rule 43, after sub-rule (5), –*

*(a) in Explanation 1, clause (c) shall be omitted;*

*(b) after Explanation 2, with effect from the 1st day of October, 2023, the following Explanation shall be inserted, namely: -*

***"Explanation 3:- For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers."***

5.30 Further, perusal of the excerpts of para 7.59 of the 'Minutes of the 47<sup>th</sup> Meeting GST Council held on 28<sup>th</sup> & 29<sup>th</sup> June, 2022', confirms the position that the intention

behind these amendments, is to include certain transactions (supplies from 'Duty Free Shops', specifically) under paragraph 8(a) of Schedule III of CGST Act in the value of exempt supply, for the purpose of reversal of appropriate ITC. For facilitation, the relevant portion of the same is reproduced as below :-

*"ii. For future, there is a need to exclude refund in respect of ITC on inputs/ input services pertaining to Duty Free Shops at Arrival Terminal by amending Explanation to sub-section (3) of section 17 of CGST Act by including certain transactions under paragraph 8(a) of Schedule III of CGST Act in the value of exempt supply. The Law Committee recommended;-*

*b. To amend sub-section (3) of Section 17 of CGST Act, 2017 by substituting the existing explanation with the explanation proposed in the Agenda.*

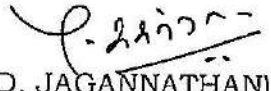
*c. Post amendment in sub-section (3) of Section 17 of CGST Act, the supplies from Duty Free Shops at arrival terminal to the incoming passengers to be prescribed through the Rules so that value of such supply are not excluded for calculation of "value of exempt supply" for the reversal of ITC."*

5.31 Under the facts and circumstances of the case, we are of the considered opinion that reversal of proportionate input tax credit of common inputs/input services/Capital goods is not warranted at the hands of the Appellant in terms of the amended Section 17(3) of the CGST Act, 2017 read with Explanation 3 of Rule 43 of the CGST Rules, 2017, even when the activity/transaction in question is covered under paragraph 8(a) of Schedule III of the CGST Act, as long as it does not relate to supplies from 'Duty Free Shops' at arrival terminal in international airports to the incoming passengers.


6. In view of the detailed discussion supra, we pass the following order.

#### ORDER

- (i) The ruling pronounced by the AAR in Advance Ruling No.17/ARA/2024 dated 25.07.2024 in relation to Query No.1 of the application for advance ruling filed by the appellant is upheld.
- (ii) The ruling pronounced by the AAR in Advance Ruling No.17/ARA/2024 dated 25.07.2024 in relation to Query No.2 of the application for advance ruling filed by the appellant is upheld.
- (iii) The ruling pronounced by the AAR in Advance Ruling No.17/ARA/2024 dated 25.07.2024 in relation to Query No.3 of the application for advance ruling filed by the appellant stands modified to the extent discussed in para 5.31 above.

  
(D. JAGANNATHAN)  
Commissioner of Commercial Taxes  
Tamil Nadu/Member AAAR



  
(ASHISH VARMA)  
Pr. Chief Commissioner of GST  
& Central Excise, Tamilnadu &  
Puducherry Zone/Member AAAR

To

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//RPAD//

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4. The Joint Commissioner, Chennai (South) Division
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7. Master File / spare – 1.