AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING , NO.1 , GREAMS ROAD, CHENNAI -600 006.

RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER SECTION 98(4) OF THE TNGST ACT, 2017.
Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai-600 034.	Smt. T. Indira, Joint Commissioner / Member (SGST), Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.

Advance Ruling No.116/AAR/2023 Dated:22.11.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAGCM7782A1ZK
Legal Name of Applicant		Mitsubishi Electric India Private Limited
Registered Address / Address provided while obtaining user id		Isana Katima, Door No.497 and 498, 3rd floor, Poonamallee High Road, Aurambakkam, Chennai, Tamil Nadu – 600 106
Details of Application		GST ARA – 01 Application Sl.No.02/2023 dated 19.01.2023
Jurisdictional Officer Concerned Officer		Centre : Chennai Outer Commissionerate; Gummidipoondi Division. State : Arumbakkam Assessment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Wholesale Business
B	Description (in brief)	Upon premises based audit by the Customs authorities, it was observed that there were certain mis-classification of the goods imported during the FY 2018-19, FY 2019-20 and FY 2020-21. Subsequently, the applicant has made payment of differential Customs through documents evidencing payment in the month of July 2022.
Issue/s on which advance ruling required		Now the Company wants to seek an advance ruling in respect of whether the company is eligible to avail the ITC of IGST paid as part of differential payment made during the relevant period under the GST law.
Question(s) on which advance ruling is required		a. Whether the Company is eligible to avail the input tax credit ('ITC') of integrated tax ('IGST') paid as part of differential Customs duty for imports made during FY 2018-19, FY 2019-20 and FY 2020-21 (hereinafter referred to as "relevant period"), in terms of the timeline prescribed under Section 16(4) of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017')? b. Whether documents evidencing payment can be considered as a valid duty paying document for the purpose of availing ITC of the IGST paid as part of differential Customs duty paid during the relevant period,. in terms of Section 16(2) of the CGST Act, 2017 read with rule 36(3) of

	CGST Rules, 2017? c. Whether the provisions prescribed under the Goods and Services Tax ('GST') law imposes any restriction on availment of ITC of the differential IGST paid post on-site audit by Customs authorities?

1. The applicant submitted a copy of Electronic Cash Ledger evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The applicant, a GST Registrant, is a Private Limited company under the Administrative control of 'STATE' and they are a highly reputed premium brand and Global Leader in Electric and Electronic products & equipment in the Air-conditioning Business, Factory Automation, Transportation systems, power semiconductors.

2.2 The applicant has submitted that -

- They are eligible to avail ITC of IGST paid as a part of differential Customs duty for imports made during relevant period in terms of the timeline prescribed under Section 16(4) of the CGST Act, 2017.
- Section 16(4) of the CGST Act, 2017 has specifically related the said time limit to only 'invoices' or 'debit notes. That in the instant case, ITC claimed by the Company is not on the basis of invoice or debit note, but solely on the basis of the BOEs (including documents evidencing payment).
- However, as per Rule 36(1)(d) of the CGST Rules, 2017, *"a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports" has been prescribed as a valid document for the purposes of claiming Input tax credit.*
- As a result, the bar imposed by Section 16(4) of the CGST Act applies only to invoices and debit notes and the said two expressions do not cover within their scope the concept of a BoE. Therefore, the Company should not be restricted by virtue of Section 16 of the CGST Act, 2017, from claiming ITC of IGST paid as part of differential Customs duty, based on BoEs filed during the relevant period.

- Documents evidencing payment can be considered as a valid duty paying document for the purpose of availing ITC, and accordingly, it is evident from Rule 9(1)(b) that ITC is eligible on the basis of challan evidencing payment of additional amount of additional duty, on the basis of which it can be proved that the duty has been paid by the taxpayer.
- As Per Section 17(5) of the CGST Act, 2017, ITC is restricted in cases where the tax has been paid in accordance with the provisions of Sections 74, 129 and 130 of the CGST Act, 2017.
- In the present set of facts, the Company has made payment of the differential customs duty, post on-site audit by the Customs authorities, alongwith appropriate interest and penalty, before any show cause notice had been issued to the Company in this regard and accordingly the provisions of Sections 74, 129 and 130 of the CGST Act, 2017 does not apply to the instant case. Therefore, ITC of IGST paid as part of differential Customs duty should be available to the taxpayer, in the instant case.

2.3 The authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

3. The jurisdictional Centre authority has not furnished any reply in this regard, and it is construed that there are no proceedings pending on the issue raised by the applicant.

4.1 The concerned State authority under whose administrative jurisdiction the taxpayer falls, have vide letter dated 27.02.2023 stated that on perusal of the Audit Report of the Deputy Commissioner of Customs, it is seen that on the mis-classification being pointing out, the applicant had agreed to the lapse and paid the differential tax payable along with applicable interest and penalty on 28.07.2022. The concerned authority has reasoned out that the order passed by the Deputy Commissioner of Customs (Audit), New Delhi, based on the mis-classification of CTH and Basic Custom duty paid by the Applicant with interest, cannot be treated as revised Bill of Entries as per Rule 36(1)(d), as claimed by the Applicant.

4.2 The State authority further stated that as per Rule 36(3) *"No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of fraud,*

willful misstatement or suppression of facts.", and accordingly, it was opined by the State Authority that the Applicant is not eligible to claim IGST on payment of difference of Basic Custom Duty for willful misclassification as per Custom's Audit Report for the FY years 2018-19, 2019-20 and 2020-21, as per Rule 36(3) of SGST and CGST Act, 2017.

5.1 On interpretation of law, the applicant states that –

- Section 7 of the IGST Act, 2017 cover import of goods as 'inter-State' supply, the levy and collection of which is specified under Section 5 of the IGST Act, 2017. Further, Section 3(7) and 3(8) of the Customs Tariff Act, 1975 covers levy of Customs duty on import of goods, which includes Basic Customs Duty ('BCD'), IGST and Social Welfare Surcharge ('SWS').
- Section 16 of the CGST Act stipulates the provisions or eligibility of input tax credit. It provides that every registered person under GST is entitled to take credit of input tax charged on any supply of goods or services, which are used or intended to be used in the course or furtherance of his business. As per Section 16(2) ITC cannot be availed unless the taxpayer
- is in possession of a 'tax invoice or debit note', or 'such other tax paying documents as may be prescribed',
- has received the goods or services or both,
- the tax charged in respect of such supply has been actually paid to the Government, and
- has furnished the return under Section 39.
- In addition, as per Section 16(4) of the CGST Act, the last date for the availment of ITC for a particular financial year is due date of furnishing of GSTR-3B for the month of September of next year or the relevant annual return, whichever is earlier.
- Rule 36 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules, 2017) provides for other documentary requirements and conditions for claiming ITC. The said rule provides for documents that are considered to be valid for the purpose of availing ITC. As per sub-rule (d) to Rule 36 "*a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;.....*" is a prescribed document for availing ITC.
- Section 17 of the CGST Act, 2017 lists down certain exceptions wherein benefit of ITC is denied. One such restriction under sub-section (5) to Section

17 is applicable in cases where the tax has been paid in accordance with the provisions of Sections 74, 129 and 130 of the CGST Act, 2017.

- Further Rule 36(3) of the CGST Rules, provides for restriction on availment of credit in respect of tax amount discharged pursuant to demand order confirmed on account of any fraud, willful misstatement or suppression of facts.
- Section 20 of the IGST Act, 2017 borrows the provisions from the CGST law in so far as it relates to "(iv) input tax credit", amongst other issues, whereby it becomes clear that the said provisions apply mutatis mutandis in relation to Integrated tax, as they apply in relation to central tax, as if they are enacted under the IGST Act.
- As per Rule 2(62) of the CGST Rules, 2017, the term 'input tax' shall include integrated tax paid on imports.
- Rule 2(66) of the CGST Rules, 2017, defines an "Invoice", from which it could be understood that a "Bill of Entry" does not fall within the purview of the definition of 'tax invoice'. In fact, a reference to Rule 36(1) of the CGST Rules, 2017, where both the documents have been specified separately, further affirms the fact that the legislature has contemplated different meanings for the two expressions.
- Further, while sub-rule (1) to Rule 36 specifies 'Bill of Entry' as one of the documents for availing ITC, sub-rule (4) to Rule 36 specifies only invoices and debit notes, wherein the details of the same are required to be furnished in the statutory returns filed by a taxpayer.
- It is therefore clear that a BoE does not fall within the purview of the definition of 'invoice' or a 'debit note', and therefore the bar imposed by Section 16(4) of the CGST Act applies only to invoices and debit notes and the said two expressions do not cover within their scope the concept of a BoE. As a result, the Company should not be restricted by virtue of Section 16 of the CGST Act, 2017, from claiming ITC of IGST paid as part of differential Customs duty, based on BoEs filed during the relevant period.
- Rule 36 of the CGST Rules, 2017 prescribes tax paying documents and conditions subject to which eligibility of ITC under the provisions of Section 16 of the CGST Act, 2017 is determined. In relation to import of goods, the said Rule states that ITC can be claimed on the basis a bill of entry or any similar document. Further, such similar document should be one which can

be used for assessment of IGST on imports under Customs Act or Rules made thereunder.

- The differential Customs duty has been paid by the Company post on-site audit by Customs authorities by way of the documents evidencing payment. The payment made vide demand draft along with a submission to the Customs authorities to this effect typically serves as evidence of the duty paid. The same is basically a document which is used for the payment of additional / differential duty, post on-site audit by Customs authorities. Given this, it can be said to be a document evidencing payment of duty and not a document used for assessment of IGST on imports.
- The Customs authorities on submission of challan and workings have appropriated the payment towards the customs dues which itself substantiates that those documents are accepted under the customs law by the authorities. Hence, the same should be acceptable under GST also.
- On the basis of various judicial pronouncements, it appears that the documents evidencing payment as produced by the Company to prove payment of differential duty should be given due consideration as a valid duty paying document for availment of ITC.
- Since the GST law is pari materia to the erstwhile regime to a large extent, reference can also be drawn from similar provisions in the erstwhile regime. Rule 9(1)(b) the CENVAT Credit Rules, 2004 provided list of documents basis which CENVAT credit could be availed. One of the said documents was a supplementary invoice, which basically included challan or any other similar document evidencing payment of additional amount of additional duty leviable under Section 3 of the Customs Tariff Act, 1975.
- As per Section 17(5) of the CGST Act, 2017, ITC is restricted in cases where the tax has been paid in accordance with the provisions of Sections 74, 129 and 130 of the CGST Act, 2017. On a bare perusal of Sections 129 and Section 130 of the CGST Act, 2017, it can be concluded that the case of the Company does not fall within the ambit of Sections 129 and Section 130 of the CGST Act, 2017, since Section 129 provides for detention and seizure of goods in case they are being transported or stored while in transit and Section 130 provides for confiscation of goods in certain cases of contravention of the CGST Act, 2017.
- Accordingly, the point to be examined is whether the Company is barred from claiming ITC by virtue of Section 74 of the CGST Act, 2017, which deals with

the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful mis-statement or suppression of facts.

- Section 74 contemplates that the proper officer shall serve a show cause notice ("SCN") where it appears to him/ her that tax has not been paid, tax has been short paid, tax has been erroneously refunded or ITC has been wrongly availed, on account of any fraud, willful misstatement or suppression of facts in order to evade tax. Since no SCN has been served on the Company by the proper officer and only an audit has been conducted had been conducted by the Customs authorities, and the same does not amount to a SCN being served on the Company.
- It is important to refer to Explanation 2 of Section 74, from which it could be seen that *"suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."* The Company has made full disclosures in its returns and hence does not come within the purview of the first part of the definition of 'suppression'. For a particular case to come within the second part of the definition, a written request has to be made by the proper officer asking for the relevant information. In the present case, no such written request has been made by the proper officer. That being the case, the stage of failing to furnish any particular information does not arise at all. Consequently, it follows that there can be no suppression as per the second part of the definition of 'suppression'.
- The ITC disallowance is only when any payment is made in accordance with Section 74. In the present case, no proceedings have been initiated u/s 74. Rather the payment of tax along with interest and penalty was made suo motu pursuant to an enquiry under customs. Hence, there is no such disallowance.
- Further, as per Rule 36(3) of the CGST Rules, 2017, no ITC is allowed to the taxpayer in case the tax has been paid in pursuance of any order where demand has been confirmed on account of fraud, willful misstatement or suppression of facts. The restriction is only if payment is made pursuant to an order conforming the demand on account of any fraud, willful misstatement or suppression of facts.

- The Company submits that it has not deliberately omitted so as to escape from payment of duty. In fact, proper intimation has been made by the Company to the Customs authorities by way of letter dated 17 June 2019. Moreover, no allegation of suppression has been made by the Department so far. Therefore, the Company is not liable for any suppression of facts in order to avoid payment of duty and accordingly does not get cover under the ambit of Section 74 of the CGST Act, 2017. Given this, the above provision on ITC restriction should not be applicable on the Company. Accordingly, ITC of IGST paid as part of differential Customs duty should be available.

5.2 Accordingly, the applicant interpreted that the different IGST paid should be available as ITC to the company and that the restriction on ITC as per the various provisions discussed above is not applicable in their case. They were also of the opinion that the time limit applicable to the availment of ITC based on the invoices and debit notes is not applicable to the 'Bill of Entry' in general, and that the challans under which payment of differential IGST has been made by them, should be treated as proper documents for the purpose of availment of ITC.

6.1 The applicant, after consent, was given an opportunity to be heard in person on 16.10.2023. Shri Sivarajan K, Chartered Accountant who is the Authorized Representative of the applicant, along with Shri Mahesh Kumar, Senior Manager, M/s. Mitsubishi appeared before the authority and reiterated the submissions made in the application. They submitted a paperbook as their additional submission during the hearing and reiterated their submissions made in it. On perusal of the paperbook furnished by the applicant, it was seen to contain the extract of the legal provisions referred by them and copies of the various case laws in support of the arguments put forth by them.

6.2 The Members queried as to whether any revised Bill of Entry was issued and any letter/form was submitted by them after payment of differential duty for which they answered in negative for both the questions. When the members further queried as to under which Section that the penalty of 15% was paid, the Authorised Representative replied that it was paid as per the instructions of the Audit team.

DISCUSSION AND ANALYSIS

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing and the comments furnished by the State Tax Authorities. The applicant filed advance ruling application under Section 97(2) of GST Act, 2017.

7.2 We find that the applicant has submitted that in respect of the imports undertaken during FY 2018-19, FY 2019-20 and FY 2020-21, the Company has discharged applicable Customs duty and accordingly availed credit of the IGST paid as part of it. Upon on site post clearance audit by the Customs authorities, certain mis-classification of the goods imported during the relevant period was observed. After discussions with the Customs authorities, the applicant made payment of differential Customs duty as applicable during the relevant period. The said payment has been made by the Company during the year 2022 vide demand drafts. Also, requisite certificate regarding the said payment has been issued by the concerned bank in this regard. The Company has also separately filed a letter with the Customs authorities by specifically indicating the amount of IGST (forming part of the differential Customs duty) that has been discharged vide the said demand drafts. The applicant had stated that the payment of differential IGST can very well be linked to individual imports and BoEs, and that so far, no notice has been issued on the Company regarding this differential duty payment.

8.1 Out of the three queries raised by the applicant, initially the query referred at clause (c), i.e., *"(c) Whether the provisions prescribed under the Goods and Services Tax ('GST') law imposes any restriction on availment of ITC of the differential IGST paid post on-site audit by Customs authorities?"* is taken up for discussion and analysis.

8.2 For ease of reference, the relevant legal provisions are reproduced herein as below :-

8.2.1 Section 16 of the CGST Act stipulates the provisions or eligibility of input tax credit. The relevant portion is as under:

> ***"16. Eligibility and conditions for taking input tax credit***
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his*

business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

Explanation.-.....

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39.....

Further, sub-section (4) to Section 16 of the CGST/TNGST Act, 2017, reads as

"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

8.2.2 Section 17(5) of the CGST/TNGST Act, 2017, reads as

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

.....

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130."

8.2.3 In addition, Rule 36 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules, 2017) provides for other documentary requirements and conditions for claiming ITC. The said rule provides for documents that are considered to be valid for the purpose of availing ITC. The same has been reproduced hereunder:

"(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports....."

However, sub-rule (3) to Rule 36 of the CGST/TNGST Rules, 2107, reads as :-

"(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts"

8.3 It could be seen from the above that Sub-rule (3) to Rule 36 of the CGST/TNGST Rules, 2107 discusses about a situation where the tax is required to be paid in pursuance of an order by way of confirming a demand on account of fraud, willful misstatement or suppression of facts. Whereas, in the instant case, it is quite clear that the differential tax of customs and IGST paid by the applicant is a result of the on-site post clearance audit by the Customs authorities, where certain issues relating to mis-classification of the goods imported during the relevant period was observed. Accordingly, based on the submissions made and documents available on record, we are of the opinion that the provisions of Sub-rule (3) to Rule 36 of the CGST/TNGST Rules, 2107, does not apply to the instant case.

8.4.1 Moving on to the provisions of Section 17(5) of the CGST/TNGST Act, 2017, it may be seen that clause (i) to sub-section (5) of Section 17 states that the Input Tax credit shall not be available in respect of *"any tax paid in accordance with the provisions of sections 74, 129 and 130."*. It may be seen that Section 129 deals with *"Detention, seizure and release of goods and conveyances in transit"*, and Section 130 deals with *"Confiscation of goods or conveyances and levy of penalty"*, whereby it becomes clear that Sections 129 and 130 do not apply to the instant case.

8.4.2 Accordingly, we are left with Section 74, and a discussion on the same assumes significance in the context of the situation. The provisions of Section 74 (1) of the CGST Act, 2017 are reproduced, as below :-

*"**74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.** — (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount*

specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

8.4.3 It may be noted here that though serving of a notice on the person chargeable with tax not paid or short paid is a requirement under the said provisions, a window has been provided to the taxpayers whereby they could avoid service of notice to them, if they come forward to pay the tax along with appropriate interest and a penalty equivalent to fifteen percent of such tax, as laid down under sub-sections (5) and (6) to Section 74 of the CGST Act, 2017, which is reproduced as below :-

"(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder."

8.5 From the documents furnished, it is observed that the audit points relating to Mis-classification of "Branch Pipe" and "Joint" had been communicated to the applicant through a report on 'Exit Conference dated 27.07.2022 for PBA in r/o M/s.Mitsubishi Electric India Pvt. Ltd. (IEC – 0510059449)', wherein the differential duty of Customs and IGST becomes payable by the applicant. The applicant in turn had filed a letter dated 28.07.2022 intimating the Audit Commissionerate about the payment of the differential duty along with interest and penalty at 15%, which has been acknowledged in the Audit Report No.66/B1/Delhi/2022-23 dated 01.09.2022 signed by the Deputy Commissioner of Customs (Audit).

8.6 Section 7 of the IGST Act, 2017 cover import of goods as 'inter-State' supply, and the levy of collection of IGST gets covered under Section 5 of the IGST Act, 2017, as under:

"5. Levy and collection

(1) .....

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962.)."

Section 3 of Customs Tariff Act,1975 covers levy of Customs duty on import of goods, which includes Basic Customs Duty ('BCD'), IGST and Social Welfare Surcharge ('SWS'). The relevant extract of Section 3(7) & 3(8) in relation to integrated tax is also reproduced hereunder:

> *'(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) 9 [or sub-section (8A), as the case may be].*
>
> *(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of- (a) the value of the imported article determined under sub- section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and (b) any duty of customs chargeable on that article under Section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-*section (9).

8.7 Accordingly, it becomes clear that while the payment of differential duty of Customs gets covered under the legal provisions relating Customs, the differential IGST payable gets covered under the Integrated Goods and Services Tax Act, 2017. Further, as per Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2014 applies mutatis mutandis to IGST, in so far as it relates to various aspects including "(iv) Input Tax credit", "(ix) Payment of tax", "(xvi) demands and recovery, etc.

8.8 Under 'Chapter XV – DEMANDS AND RECOVERY', Section 73 talks about 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts' and Section 74 talks about 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts'

8.9 It could be seen that in respect of both the Sections 73 and 74 meant for demand and recovery, sub-sections (5) and (6) provides the taxpayer with a window for avoidance of show cause notice, provided the taxpayer comes forward to discharge the tax liability either on the basis of his own ascertainment, or on being ascertained by the proper officer. However, the crucial difference lies in the fact that

while Section 73 stipulates payment of tax along with applicable interest, Section 74 on the other hand stipulates that the tax along with applicable interest and a penalty equivalent to fifteen percent of such tax, should be paid, for such avoidance of show cause notice.

8.10 Further, it could be seen that under the demanding provisions of CGST/TNGST Acts, 2017, except for the provisions of Section 74(5), penalty under fifteen percent could not be found elsewhere under the said legal provisions. In the instant case, the fact that a penalty at 15% has been paid on the tax amount determined by the audit officers, goes to prove that the differential tax has been determined under the provisions of 74(5) of the CGST/TNGST Act, 2017, which in turn involves determination of tax by reason of wilful-misstatement or suppression of facts.

8.11 That the subject goods have been mis-classified by the applicant initially, points to the fact that the applicant has resorted to willful-misstatment to evade tax, which came to light only when the transaction of the applicant's unit was taken up for audit. Therefore, the arguments put forth by the applicant that there was no intention on their part to evade tax, and the case-laws cited by them in this regard, is of no avail to them.

8.12 Accordingly, from the submissions made by the applicant and from the documents available on file, it becomes clear that the instant case has to be construed as a case of determination of tax by reason of willful-misstatment to evade tax, in spite of the fact that no show cause notice was issued, or no order was passed in the instant case. Under these circumstances, the differential IGST paid by the applicant does not become eligible for availment of ITC as laid down under Section 17(5) of the CGST/TNGST Act, 2017.

8.13 Once the basic issue involving the availment of ITC on the differential tax paid is found to be inadmissible in the instant case, we are of the opinion that the remaining two queries, relating to the time limit prescribed and the documents evidencing payment to be considered as a valid duty paying document, are rendered redundant, as both the queries are in relation to the differential tax paid in the instant case. As a result, it is felt that the question of answering the queries referred at clauses (a) and (b), does not arise.

9. In view of the above, we rule as under;

RULING

(a) We refrain from giving any ruling in this regard in view of the reasons discussed in para 8.13 above;

(b) We refrain from giving any ruling in this regard in view of the reasons discussed in para 8.13 above;

(c) Yes, the law imposes restriction on the availment of ITC under Section 17(5) of the CGST/TNGST Act, 2017, in respect of any tax 'not paid / short paid' in accordance with the provisions of section 74, irrespective of the fact as to whether the proceedings are initiated on the basis of audit or on the basis of an anti-evasion operation, and irrespective of the fact whether a show cause notice is issued in the instant case or not.

(T.INDIRA)
Member (SGST)

AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX TAMILNADU

(D.JAYAPRIYA) 27/11/2023
Member (CGST)

To

M/s.Mitsubishi Electric India (P) Ltd., //By RPAD//
Isana Katima, Door No.497 and 498,
3rd floor, Poonamallee High Road,
Aurambakkam, Chennai - 600 106

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.

2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Principal Commissioner of GST & C.Ex.,
Chennai Outer Commissionerate.

4.The Assistant Commissioner(ST)
Arumbakkam Assessment Circle.

5.Master File / spare – 1.