

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

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present:

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Tmt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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Advance Ruling No. 23 /ARA/2023 Dated: 20.06 .2023

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / 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 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		33AAACH8417K1ZK
Legal Name of Applicant		M/s. Haworth India Private Limited
Registered Address / Address provided while obtaining user id		Survey No. 260/4, Kiloy Village, Sriperumbudur, Kancheepuram, Tamil Nadu – 602 105.
Details of Application		Form GST ARA – 001 Application Sl.No.41/2022/ARA dated 07.07.2022.
Concerned Officer		Centre: Chennai-Outer Commissionerate State: Sriperumbudur Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Manufacturing and Trading
B	Description (in brief)	
Issue/s on which advance ruling required		
Question(s) on which advance ruling is required		<p>1. In the facts and circumstances of the case, whether the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018?</p> <p>2. Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?</p>

The applicant M/s Haworth India Private Limited, having registered premises at Survey no. 260/4, Kiloy Village, Sriperambudur, Kancheepuram, Tamil Nadu – 602105 (hereinafter referred to as the applicant) is registered under the GST Act 2017 with GSTIN 33AAACH8417K1ZK. The Applicant has sought Advance Ruling on the following questions:

1. In the facts and circumstances of the case, whether the transfer of title of goods by the Applicant to its customers or multiple transfers within

the FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018?

2. Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?

1.2 The applicant submitted a copy of challan 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 has submitted the following in their Statement of relevant facts having a bearing on the question(s) raised:

The Applicant is a wholly owned subsidiary of Haworth, Inc. United States and is engaged in manufacture and sale of office furniture under the brand name 'Haworth'. The Applicant procures raw materials indigenously as well as from international market (from group entities). The Applicant imports certain finished goods from its group entities. Haworth is a worldwide global leader in design and manufacture of organic workspaces, including raised floors, movable wells, systems furniture, seating, storage and lighting.

2.2. In India, the Applicant has manufacturing facility and sales office in the state of Tamil Nadu. Further, the applicant has sales office in Karnataka, Maharashtra, Haryana and Telangana. All operations of the Applicant are located in Domestic Tariff Area (DTA). The outward supplies effected by the Applicant in India includes:

- a. Sale of goods manufactured at the manufacturing facility; and
- b. Sale of goods imported from group entities.

2.3. The Applicant is contemplating to operate the import and re-sale transaction from a Free Trade Warehousing Zone (hereinafter referred to as 'FTWZ') for operational convenience involving less documentation and swift clearance process so as to expedite project execution.

2.4. The Applicant submits that FTWZ is a Special Economic Zone wherein trading, warehousing and other activities related thereto are carried out. An FTWZ is a deemed foreign territory within the geography of India for the purpose of trade. An FTWZ, also called foreign-trade zone, formerly free port is an area within a country in which goods may be landed, handled, manufactured or reconfigured, and re-

exported without the intervention of the customs authorities. Only when the goods are moved to consumers within the country in which the zone is located do they become subject to the prevailing customs duties. The FTWZ law allows multiple transfers of ownership transactions without removal of the goods out of FTWZ, thus ensuring the trading chain to be as close as possible and as may be required, ensuring that there is no cascade of indirect taxes / compliance and avoids increase in transaction cost.

2.5. The Applicant has submitted the flow of Transaction in FTWZ for Proposed Transaction as detailed below:

- The Applicant secures space in the FTWZ for a fee to store the imported goods from a unit holder. The Applicant executes required lease agreement with the FTWZ unit holder and deposits the goods from the port by filing Bill of Entry (BOE). FTWZ, owned and operated by independent third party merely clears and warehouses the goods imported. The FTWZ shall collect warehousing charges from the Applicant.
- On receipt of purchase order from the customer, the Applicant places an order with the overseas supplier for required goods. Once the goods are shipped, the Applicant intimates the FTWZ unit holder and provides copy of the purchase order and other documents for clearance of goods from the port and storage of the same in FTWZ. The FTWZ unit clears the goods from the port by filing Bill of Entry on behalf of the Applicant and stores the same in the warehouse. The FTWZ unit hands over the import invoice and other necessary documents to the Applicant. The FTWZ unit does not pay any import duty on clearance from the port.
- The Applicant transfers the title of goods to customer under the cover of an invoice. The customer shall either clear goods from the FTWZ or shall make further transfer of such goods to other customers. It is important to note that every transfer of title of goods does not result in physical delivery of goods. The goods shall continue to remain in FTWZ unit holder till the final customer files BOE and clears goods from FTWZ. The Applicant wishes to highlight that multiple transfers are made while goods are lying in FTWZ.

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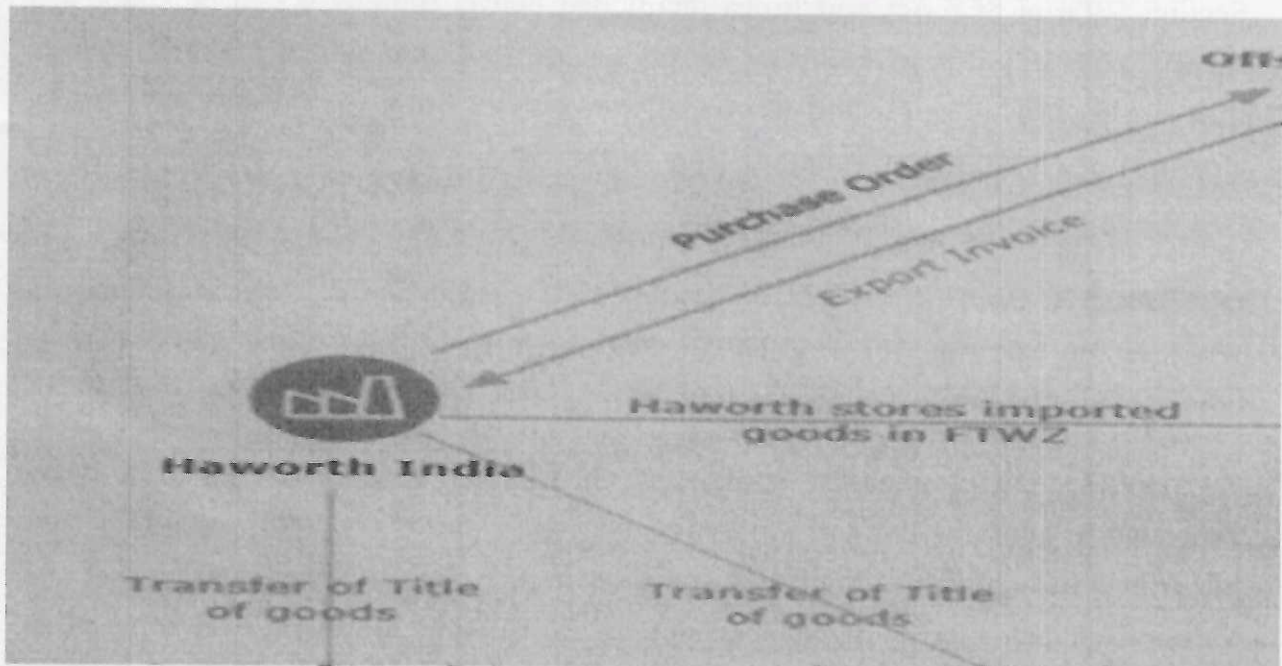
2.4. The Applicant submits that FTWZ is a Special Economic Zone wherein trading, warehousing and other activities related thereto are carried out. An FTWZ is a deemed foreign territory within the geography of India for the purpose of trade. An FTWZ, also called foreign-trade zone, formerly free port is an area within a country in which goods may be landed, handled, manufactured or reconfigured, and re-

exported without the intervention of the customs authorities. Only when the goods are moved to consumers within the country in which the zone is located do they become subject to the prevailing customs duties. The FTWZ law allows multiple transfers of ownership transactions without removal of the goods out of FTWZ, thus ensuring the trading chain to be as close as possible and as may be required, ensuring that there is no cascade of indirect taxes / compliance and avoids increase in transaction cost.

2.5. The Applicant has submitted the flow of Transaction in FTWZ for Proposed Transaction as detailed below:

- The Applicant secures space in the FTWZ for a fee to store the imported goods from a unit holder. The Applicant executes required lease agreement with the FTWZ unit holder and deposits the goods from the port by filing Bill of Entry (BOE). FTWZ, owned and operated by independent third party merely clears and warehouses the goods imported. The FTWZ shall collect warehousing charges from the Applicant.
- On receipt of purchase order from the customer, the Applicant places an order with the overseas supplier for required goods. Once the goods are shipped, the Applicant intimates the FTWZ unit holder and provides copy of the purchase order and other documents for clearance of goods from the port and storage of the same in FTWZ. The FTWZ unit clears the goods from the port by filing Bill of Entry on behalf of the Applicant and stores the same in the warehouse. The FTWZ unit hands over the import invoice and other necessary documents to the Applicant. The FTWZ unit does not pay any import duty on clearance from the port.
- The Applicant transfers the title of goods to customer under the cover of an invoice. The customer shall either clear goods from the FTWZ or shall make further transfer of such goods to other customers. It is important to note that every transfer of title of goods does not result in physical delivery of goods. The goods shall continue to remain in FTWZ unit holder till the final customer files BOE and clears goods from FTWZ. The Applicant wishes to highlight that multiple transfers are made while goods are lying in FTWZ.

- The final customer, produces transfer of title document and files BOE for re-warehousing (SEZ) / home consumption (others) and clears the goods from the FTWZ. At this juncture goods are removed from the warehouse and is taken to the premises of the Customer.
- The applicant has furnished below the diagrammatic representation of the flow of the transaction:



3.1. The applicant has made the following factual and legal submissions in relation to the questions for which advance ruling is sought:

Question No.1

3.2. The Applicant submits that, the Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018 envisages transactions or activities which shall be treated neither as supply of goods nor as supply of services under GST. The Entry no. 8(a) of the schedule, covers supply of warehoused goods to any person before clearance for home consumption. Further, explanation to the entry provides that, 'warehoused goods' shall have the same meaning as assigned to it in the Customs Act, 1962.

3.3. The Applicant submits that FTWZ is a special category of Special Economic Zone as per Section 2(Za) of the SEZ Act, 2005, wherein mainly trading and warehousing and other activities related thereto are carried on. Both Customs

bonded warehouse and FTWZ are required to execute bond with the Customs in order to import and store the goods in warehouse without payment of any duty. It is pertinent to note that although the provisions of bonding by a bonded warehouse and bonding by an SEZ/ FTWZ is governed by different laws with differing obligations, the rationale of bonding imported goods remains the same i.e. to avail duty benefit under the Customs Act, 1962. Thus every SEZ becomes a bonded premises under the Customs Act, 1962 by virtue of the deeming fiction created by Section 53(2) of SEZ Act and Rules mentioned above, thereby it can be construed that FTWZ is in parity with bonded warehouse under Customs Act, 1962. Therefore, that since FTWZ is equivalent to bonded warehouse, transfers within FTWZ before clearance shall fall under Schedule III of the CGST Act, 2017, thereby not attracting levy under GST.

QUESTION 2

Whether the Circular No. 3/1/2018 – Integrated Tax (IGST) dated 25.05.2018 is applicable to the present factual situation?

3.4. The Circular clarifies the applicability of IGST on goods supplied while being deposited in customs bonded warehouse effective from 07.04.2018 and states that Integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. This circular was made applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse on or after 01.04.2018.

3.5. Further, in terms of valuation the applicant stated that Section 3(8A) of Customs Tariff Act, levy of IGST on sale of goods deposited in warehouse but before clearance for home consumption, the valuation is higher of transaction value or sale value to buyer. The said provision infers that in case of goods deposited in a warehouse, only the person who is ultimately clearing the goods for home consumption is subject to tax and the transferor is not subject to tax on such transfer of warehoused goods.

3.6. The Applicant submits that in case of FTWZ/ bonded warehouse the FTWZ files 'in-to bond' BOE without payment of duty for warehousing and point of taxation

under customs is deferred to time of clearance from FTWZ. Hence, under the customs provision, the transaction is subjected to levy when goods are cleared from the FTWZ. Therefore, as clarified in the Circular No.3/1/2018-IGST dated 25.05.2018, taxing the transaction before clearance does not arise for supply of warehoused goods, while being deposited in a FTWZ/ customs bonded warehouse. The Applicant is of the considered view that Circular No. 3/1/2018 – Integrated Tax (IGST) dated 25.05.2018 is applicable for the present transaction of transfer of title of warehoused goods and is of the view that supply of goods by the Applicant to customers subsequent transfers when the goods are still lying in the custom bonded warehouse or the FTWZ is outside the purview of GST as per Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018 and is not chargeable to tax under GST provisions till the goods are cleared for home consumption.

3.7. The Applicant has also placed reliance on the advance ruling pronounced by Tamil Nadu Advance Ruling Authority in the case of:

- a. The Bank of Nova Scotia – Order No. 23/ AAR/ 2018 dated 31.12.2018
- b. Sadesa Commercial Offshore De Macau Limited – Order No. 24/ AAR/ 2018 dated 31.12.2018.

4.1. The Central Jurisdiction Officer, the Joint Commissioner, Chennai Outer Commissionerate has offered the following remarks on the questions raised by the applicant:

4.1.1. Question No.1:

From the application and circumstances narrated therein, it appears that the transaction of supply takes place within FTWZ (Free Trade Warehouse Zone). According to the Schedule III of CGST Act (Sl.No.8(b), the transaction/activity of supply of goods by the consignee to any other person by the 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 of home consumption is neither a supply of goods nor a supply of service.

According to Explanation II to Schedule III of CGST Act 2017, the expression “warehoused goods” in the schedule shall have the same meaning as assigned to it in the Customs Act 1962.

According to Section 2 (43) of Customs Act 1962 "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)

According to section 2(44) "warehoused goods" means goods deposited in a warehouse;

4.1.2. Even though the day-to-day activities like warehousing and clearing of goods for home consumption on payment of applicable customs duties are supervised /monitored by Customs officials posted in the FTWZ in accordance with SEZ Act 2005, read with Customs Act, 1962, the approval/license/administrative control for FTWZ are fully governed under the provisions of SEZ Act 2005. Therefore, FTWZ is not a warehouse licensed under Customs Act 1962.

4.1.3. Hence the transactions narrated in the application are not covered under Schedule III of the CGST Act 2017.

4.2.1 Question No.2

Circular No.3/1/2018 dated 25.05.2018 has been issued for clarifying the scope of supply with regard to transactions in Customs bonded warehouses and hence the same is not applicable to FTWZ which is not a warehouse as defined under the Customs Act, 1962.

4.3. He further stated that no proceedings in respect of the questions raised by the applicant is pending against the applicant in his jurisdiction.

5.1. The State jurisdiction officer, the Assistant Commissioner(ST), Sriperumbudur circle has not offered any remarks.

5.2. The Joint Commissioner (ST), Intelligence- II, Chennai has informed that no proceeding is pending in respect of the applicant.

6. The Applicant has been offered personal hearing on 15.03.2023 through virtual mode and their Authorized representative Ms. R. Sukanya, Chartered Accountant has attended the hearing and reiterated the submissions already made.

7.1. We have gone through the entire case records and submissions made by the applicant in their application and during personal hearing.

7.2. The basic point to be determined is that the admissibility of the application. In terms of Section 97(2) of the GST Act, the question on which advance ruling is sought under the act shall be in respect of,-

- a) classification of any goods or services or both;
- b) applicability of a notification issued under the provisions of this Act;
- c) determination of time and value of supply of goods or services or both;
- d) admissibility of input tax credit of tax paid or deemed to have been paid;
- e) determination of liability to pay tax on any goods or services or both;
- f) whether the applicant is required to be registered;
- g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

7.3. The Applicant has sought ruling on the following questions:

1. In the facts and circumstances of the case, whether the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018?
2. Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?

The above questions fall within the scope of Section 97(2) of the CGST Act, 2017, as stated supra and therefore the application is admissible.

7.4.1. The first question raised by the applicant necessitates to see the Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018, which is as follows:

SCHEDULE III.

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. *Services by an employee to the employer in the course of or in relation to his employment.*
2. *Services by any court or Tribunal established under any law for the time being in force.*

3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

6. Actionable claims, other than lottery, betting and gambling.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

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

(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.

Explanation 1.-For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

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 (50 of 1962)

[Sl.No.7 and 8(a) and (b) are inserted by s.32 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.]

7.4.2. From the above it can be seen that, as per paragraph 8(a) above, supply of warehoused goods to any person before clearance for home consumption is an activity/transaction which shall be treated neither a supply of goods nor a supply of services. As per the explanation 2 for the paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962. According to Section 2(43) of Customs Act, 1962, '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 of Customs Act, 1962. According to Section 9(44) 'Warehoused goods' means goods deposited in a 'warehouse'.

7.4.3. Section 57, Section 58 and Section 58A of Customs Act, 1962, reads as below:

57. Licensing of public warehouses.—*The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.*

58. Licensing of private warehouses.—*The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.*

58A. Licensing of special warehouses.—*(1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.*

7.4.4. Whereas, Free Trade Warehousing Zone is a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on. It is a deemed foreign territory within the geography of India for the purpose of tariff and trade. The Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006 are the legal framework for FTWZ. Instructions are also issued by the Ministry of Commerce & Industries from time to time to clarify various operational aspects of FTWZ. Even though the day to day activities like warehousing and clearing of goods for home consumption on payment of applicable custom duties are supervised/monitored by Customs officials posted in the FTWZ in accordance with SEZ Act, 2005 read with Customs Act, 1962, the approval/license/administrative control for FTWZ are fully governed under the provisions of SEZ Act, 2005. Therefore, FTWZ is not a warehouse licensed under Customs Act, 1962. Therefore, paragraph 8(a) in the Schedule III is specific to the warehoused goods lying in the warehouses licensed under Customs Act, 1962.


7.4.5. Whereas the transactions narrated in the application are in FTWG, which are warehouses governed under the provisions of SEZ Act, 2005 and not licensed under Customs Act, 1962. Therefore, the transactions in the FTWG narrated in question no.1 of the ARA , will not be covered under Schedule III of CGST Act, 2017 readwith CGST Amendment Act, 2018.

7.5.1. Question 2 raised in the application which states - Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?

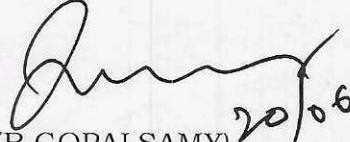
Circular No. 03/01/2018 – IGST, dated 25th May 2018 has been rescinded vide Circular No. 04/01/2019 –IGST, dated 01.02.2019, in view of the amendment made in Schedule III of the CGST& TNGST Act, 2017, by inserting Paragraph No. 8(a), so as to provide that the ‘ supply of warehoused goods to any person before clearance for home consumption’ shall be neither a supply of goods nor a supply of service.

RULING

1. In the facts and circumstances of the case, the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ will not be covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018.
2. As discussed in para 7.5.1. above.


(N.USHA) 20.6.2023
Member (SGST)




(R.GOPALSAMY) 20/06/23
Member (CGST)

To

M/s Haworth India Private Limited,
Survey no. 260/4,
Kiloy Village Sriperambudur,
Kancheepuram,
Tamil Nadu – 602 105.

//By RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate.
2. The Assistant Commissioner (ST),
Sriperumbudur Assessment Circle.
Chennai.
3. Master File / spare – 1.