

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ORDER NO. GUJ/GAAR/ADM//2017-18/1
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/1)

Date : 30.10.2017

Name and address of the applicant	:	M/s. Pon Pure Chemical India Private Limited 341, 2 nd Floor, Sector 1A, Gandhidham, Kachchh – 370 201. (Gujarat)
GSTIN of the applicant	:	24AACCP3026E1ZZ
Date of application	:	01.08.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(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.
Date of Personal Hearing	:	17.10.2017
Present for the applicant	:	Shri Sivarajan Kalyanaraman, CA

The application for advance ruling of M/s. Pon Pure Chemical India Pvt. Ltd. was heard on 17.10.2017 on the issue as to whether the application is fit for admission or not. Shri Shivrajan Kalyanaraman was requested on that day to submit the reasons / provisions on following issues by 23/25.10.2017.

- (i) Whether the authority is within jurisdiction to admit application especially on the issue of ‘place of supply’?
- (ii) Whether the issue is related to Customs or is related to Goods and Services Tax?

2. The applicant has filed its further submission on 25.10.2017, kept in record as Annexure-‘A’. This order is being passed after taking into consideration the submissions in Annexure-‘A’.

3. Section 97(2) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the ‘CGST Act, 2017’) and Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the ‘GGST Act, 2017’) empowers the Advance Ruling Authority to decide the issues, which are as follows :-

- (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 the liability to pay tax on any goods or services or both;*
- (f) whether 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.*

No other issue can be decided by the Advance Ruling Authority and therefore the Acts limit the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2).

4. The taxability on High Sea Sales requires the determination of occurrence of High Seas Sales. High Seas Sales are the sales taking place prior to the imported goods crossing the Customs frontier. The definition of “import of goods” as per Section 2(10) of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the ‘IGST Act, 2017’) is as follows :-

- 2(10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;*

So, the import as well as High Sea Sales are determined on two basic questions of fact – (i) where the goods are and (ii) at what time the goods can be called to be entering into India. Both the above questions can be determined under the IGST Act, 2017 as per Section 7 of the IGST Act, 2017, which is for ‘place of supply’. As the ‘place of supply’ is not covered by Section 97(2) of the Acts, this authority is helpless to answer the questions raised in the application, as it is lacking jurisdiction to decide the issues.

5. The applicant itself in its application in reply to second query has stated as under :-

“However, the question before the Advance Ruling Authority is whether the supply by the PPC to the high sea or in-bond buyer- is also leviable to IGST under sub-section (1) of section 5 of the IGST Act since same supplies are subject to IGST on import under the proviso to Section 5(1) of IGST read with section 3(7) of IGST Act.”

So the applicant is well aware that the issue is related to place of supply

6. In addition to the above, it is also found that the question raised in the application for advance ruling pertains to the Customs’ domain and not to the Goods and Services Tax domain. This fact is bolstered by the proviso to sub-section (1) of Section 5 of the IGST Act, 2017, which reads as under :-

“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).”

It is also observed that the Central Board of Excise and Customs has issued Circular No. 33/2017-Cus dated 01.08.2017, on the issue of High Sea Sales. Thus, the issue of High Sea Sale falls in the domain of Customs and not under the Goods and Services Tax.

7. The application is therefore rejected without going into the merits of the case, on the issue of lack of jurisdiction, at the stage of admission.

ORDER

The application for Advance Ruling dated 01.08.2017 of M/s. Pon Pure Chemical India Private Limited is rejected, under sub-section (2) of section 98 of the CGST Act, 2017 and the GGST Act, 2017.

(R.B. Mankodi)

Member

(G.C. Jain)

Member

Place : Ahmedabad

Date : 30.10.2017

To

M/s. Pon Pure Chemical India Private Limited
341, 2nd Floor, Sector 1A,
Gandhidham,
Kachchh – 370 201.
(Gujarat)

Copy to :

- (1) The Commissioner, Central Goods and Services Tax & Central Excise, Kutch (Gandhidham) Commissionerate, GST Bhavan, Plot No. 82, Sector – 8, Opp. Ramleela Maidan, Gandhidham – 370 201.
- (2) The Joint Commissioner, Div.11. State Goods and Services Tax, Rajkot.
- (3) Guard File.

The applicant, in his application, has submitted the following questions on which advance ruling is required :-

- (i) Classification of 'Student's Slate' and Teacher's Slate'.
- (ii) Whether Goods and Services Tax is required to be paid under Reverse Charge Mechanism when the applicant is getting some job work done on slates?

2. We have examined the application and records. We find that the questions above are covered under section 97(2) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017').

3. The applicant, in his application, has made a declaration that the questions raised in the application are not already pending or decided in any proceedings in their case under any of the provisions of the Act. Nothing contrary to this declaration has been found on record. Hence the application is admissible.

4. The applicant, vide letter dated 23.10.2017 (received on 25.10.2017) submitted additional submissions with respect to the issues – (i) whether the question sought to be clarified in AAR application is question relating to 'Place of Supply'; and (ii) whether the question of taxability is with respect to levy under Integrated Goods and Services Tax Act, 2017 (IGST Act) or under the Customs Law.

4.1 The applicant submitted that the question sought to be clarified to AAR application is not question relating to 'Place of Supply'. They submitted that their question is on the liability to tax on High Sea Sale and Bond Sale transaction executed by the applicant under sub-section (1) of section 5 of the IGST Act. They further submitted that the levy of CGST and SGST / IGST is dependent on whether a transaction is inter-state or intra-state supplies. They referred to various provisions of CGST Act, 2017 and IGST Act, 2017 in this regard. They have also referred to various decisions given in the context of relevant State Sales Tax Acts or Customs Act.

5.1 We have examined the application and the records. We have also considered the submissions made by the applicant during the course of personal hearing as well as in their letter dated 23.10.2017.

5.2 It is observed that in case of High Seas Sale transaction, the applicant sells the imported goods to the buyer, even before the imported goods enter in the Customs Area whereas in case of Bond Transfer Sales, the applicant sells the imported goods to the buyer, after the goods enter in the Customs Area, but before the imported goods are cleared from Customs Area. In both these types of cases, the buyers are required to pay appropriate Customs Duty for clearance of imported goods and that is not an issue before this authority.

5.3 We observe that the question raised in this application is with respect to the issue whether sale of imported goods in the High Seas or in the Customs Bond by the applicant to the buyer would attract Goods and Services Tax or otherwise.

6.1 The applicant, in their application has submitted that the questions raised by them are covered under clause (g) of sub-section (2) of Section 97 of the Acts. The said clause (g) is reproduced herein below :

(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.

6.2 Section 7 of the Acts defines what does the expression 'Supply' includes. Sections 10, 11, 12 and 13 of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017) contain provisions for determination of 'Place of Supply' in respect of supply of goods and services under different eventualities. The applicant has extensively referred to these and other provisions of IGST Act, 2017 as well as to the provisions of Article 269A(1) of the Constitution of India to buttress their argument that the transactions referred to by them (High Seas Sale and Bond Transfer Sale) are covered under Inter-State Transactions

6.3 We find that the question raised by the applicant is not covered by clause (g) of sub-section (2) of Section 97 of the Acts. Even the applicant has not submitted anything with respect to transactions referred to by them (High Seas Sale and Bond Transfer Sale) as to whether the same are included under the expression 'supply' under Section 7 of the Acts or otherwise. The applicant has forcefully submitted that the transactions referred to by them (High Seas Sale and Bond Transfer Sale) are inter-state transactions as per the provisions of IGST Act,

2017. We find that these questions are related with the determination of issue of 'Place of Supply' of these transactions.

7. We find that the Authority for Advance Ruling constituted under Section 96 of the GGST Act, 2017 is the Authority for Advance Ruling for the State of Gujarat only. The questions on which the advance ruling can be sought for has been enumerated under sub-section (2) of Section 98 of the Acts, wherein question related to determination of 'Place of Supply' is not included.

8. In view of the foregoing, we pass the following order