

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



ADMISSION ORDER NO. GUJ/GAAR/ADM/2018/31
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/23)

Date : 30.7.2018

Name and address of the applicant	:	Kandla Port Trust (Deendayal Port Trust) CDC Section, Seva Sadan III, Kandla Kachchh
GSTIN of the applicant	:	24AAALK0046N1Z6
Date of application	:	26.4.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	07.06.2018
Present for the applicant	:	Shri Hardik V Thacker, CA

The applicant Kandla Port Trust (Deendayal Port Trust - DPT), has submitted that it is providing various services like Pilotage, Berthing, Cargo Handling, Warehousing etc. in relation to import and export of goods at Port of Kandla. It is submitted that the applicant collects Port dues from port users and also collects other vessel and goods related charges like Port Dues, Demurrage, On-Board labour charges, Wharfage charges, Anchorage Charges etc. It is submitted that service is provided to dealers within the state and outside the state.

2. The applicant referred to provisions of Section 5, 7 and 12 of Integrated Goods and Services Act, 2017 (herein after referred to as the 'IGST Act, 2017'). It also submitted that the applicability of Section 9 of the IGST Act, 2017 is also not clear as the definition of the term 'territorial waters' is not defined in the Act or General Clauses Act.

3. The applicant has raised the question for advance ruling 'whether IGST is applicable to port related services provided to out of the state registered dealer or CGST and SGST would apply ?

4. We have considered the submissions made by the applicant in application for advance ruling as well as during the course of personal hearing.

5. 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).

6.1 As per Section 9 of the CGST Act, 2017 and the GGST Act, 2017, CGST and SGST respectively is leviable on intra-State supplies of goods or services or both. Further, as per Section 5 of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017'), Integrated Goods and Services Tax (IGST) is leviable on all inter-State supplies of goods or services or both.

6.2 The provisions relating to determination of nature of supply i.e. whether inter-State supply or intra-state supply are contained in Section 7 and 8 of the IGST Act, 2017.

6.3 As per Section 7 of the IGST Act, 2017, subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in –

- (a) two different states;
- (b) two different Union territories; or
- (c) a State and a Union territory

shall be treated as a supply of services in the course of inter-State trade or commerce.

6.4 As per Section 8 of the IGST Act, 2017, subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union Territory shall be treated as intra-State supply.

7. In view of the aforesaid statutory provisions, the place of supply of services of the applicant is required to be determined in order to determine whether IGST would be applicable or CGST and SGST would be applicable on port related services being provided by the applicant. Thus, the entire issue is intrinsically related to determination of 'place of supply' of service by the applicant.

8. The applicant has filed application for advance ruling wherein provisions of Sections 5, 7 and 12 of the IGST Act, 2017 have been referred. Thus, the applicant is well aware that the issue is related to 'place of supply'.

9. This authority has been constituted in exercise of the powers conferred by section 96 of the Gujarat Goods and Services Tax Act, 2017, which Act extends to the whole of the state of Gujarat. This authority is a creature of statute and has to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section 97(2) of the Acts, this authority is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issues. The jurisdiction of this authority does not extend to the questions on determination of 'place of supply'.

10. 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 of M/s. Kandla Port Trust (Deendayal Port Trust) (GSTIN 24AAALK0046N1Z6) 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 : 30.07.2018.