


<p style="text-align: center;">GUJARAT AUTHORITY FOR ADVANCE RULING</p> <p style="text-align: center;">GOODS AND SERVICES TAX</p> <p style="text-align: center;">A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</p> <p style="text-align: center;">AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/12

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/48)

Date: 19.05.2020

Name and address of the applicant	:	M/s. Siddhi Marine Services LLP, Near Teen Darwaja, Grain Market, Jamnagar-361001 (Guj)
GSTIN of the applicant	:	24ACKFS2340F1ZD
Date of application	:	13.08.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(2) <i>Applicability of a notification issued under the provisions of CGST Act.</i> (5) <i>Determination of the liability to pay tax on any goods or services or both.</i>
Date of Personal Hearing	:	19.03.2020
Present for the applicant	:	Shri Rohan Thakkar

BRIEF FACTS

The applicant has submitted that they are in the business of providing services in relation to transportation of goods from Magdalla Port to the General Lighterage Area (Anchoring Point of Mother Vessel) or vice versa.

2. The applicant submitted that the Port of Magdalla is a port in Western India, located on the southern bank of the Tapi River. Lighterage Port situated on the western coast of India in Southern Gujarat, on the southern bank of River Tapi about 16 Km upstream the river. The Port of Magdalla is a lighterage port (i.e. goods are carried from a vessel to a quay by barrage or other smaller vessel).

3. The applicant submitted that Entry No.18 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 *inter alia exempts the Services by way of transportation of goods by inland waterways. Inland waterways* have been defined in the same notification to mean as “*national waterways defined in clause(h) of section 2 of Inland Water Ways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of Section 2 of the Indian Vessel Act, 1917.*

3.1 ***National waterways*** as defined in clause (h) of section 2 of the Inland

Water Ways Authority of India Act, 1985 or [the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldias Stretch of the Ganga-Bhagirathi-Hooghli River) Act, 1982], as defined in clause (b) of Section 2 of Indian Vessel Act, 1917.

3.2 Other waterway or any inland water, as defined in clause(b) of section 2 of the Inland Vessel Act, 1917:

[“inland water” means-

- i. any canal, river, lake or other navigable water **within a state**,*
- ii. any area of any tidal water deemed to be the inland water as defined by the Central Government under section 70;*
- iii. water declared by the Central Government to be smooth and partially smooth waters under clause (41) of Section 3 of the Merchant Shipping Act, 1958];*

4. The applicant further submitted that accordingly, the transportation of goods by inland water ways i.e. (i) national waterways or (ii) other waterways on any inland water is exempted from GST. For the purpose of other waterway on any inland water, the term inland water means one category as “*any canal, river, lake or other navigable water within a state.*”

5. The applicant further submitted that in the present case, goods in barrages from mother vessel to daughter vessel from Magdalla Port, Surat to its general lighterage Area of Magdalla Port is covered in the National Waterway No. 100 and therefore, the said waterway is inland waterway.

6. The applicant further submitted that transportation of goods is being done from anchorage point to the Magdalla Port, Surat in a channel or belt fixed for the same on the River Tapi and is done in the territorial waters. The transportation is being done on the River Tapi. They have also submitted the diagram of said route.

7. They further submitted that the service of transportation of goods is being provided between Magdalla Port and its General Lighterage Area (Anchoring Point of Mother Vessel) or vice versa, which falls within the state (Gujarat) and, therefore, transportation services provided within the aforesaid meaning of inland waterway should be exempt from the levy of GST in terms of aforesaid notification.

8. They further submitted that since Magdalla Port and its General Lighterage Area (Anchoring Point of Mother Vessel), between which service relating to transportation of goods are provided, are the areas falling within the State (Gujarat), and, therefore, are considered as inland waterways for the purpose of 2nd part of definition prescribed in clause (zi) of para 2 of the Notification No.9/2017-Integrated (Tax (Rate) dated 28.06.2017 read with Clause (b)(i) of Section 2 in the Inland Vessel Act, 1917 and consequently, the services provided for transportation of goods between Magdalla Port and Anchoring point of Mother Vessel are exempt from GST as per the Notification No. 09/2017-Integrated Tax (Rate).

9. In view of above backdrops, the applicant is seeking an advance ruling in respect of the following questions:

- a. Whether the service of transportation of goods from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port (From where the Mother Vessel are anchored) or vice versa, is covered under exemption contained at Sr. No. 18 of Notification No. 12/2017-Central Tax (Rate)?***
- b. Whether the service of above transportation falls in the definition of ‘Inland waterways’?***

10. At the time of personal hearing, the Authorised Representative of the applicant reiterated the facts as stated in the Application.

DISCUSSION & FINDINGS:

11. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing.

12. In this case, a moot point is to be decided as to whether service of transportation of goods from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port (where the Mother Vessel are anchored) or vice versa, is covered under exemption contained at Sr. No. 18 of Notification No. 12/2017-Central Tax (Rate) and as to whether the service of above transportation falls in the definition of ‘Inland waterways’?

13. We find that Clause (b) of Entry No.18 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017 *inter alia* exempts the Services by way of transportation of goods by **inland waterways**.

13.1 Further, clause **(zi)** of said Notification defines the “inland waterways” as under:

“inland waterways” means national waterways as defined in clause(h) of section 2 of the Inland Water Ways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of Section 2 of the Indian Vessels Act, 1917 (1 of 1917);

13.2 Thus, the “inland waterways” comprises of:

- (i)** national waterways, as defined in Clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985; and
- (ii)** other waterway on any inland water, as defined under Clause (b) of Section 2 of the Inland Vessel Act, 1917.

14. Now, we examine the definitions of **(i) national waterways**; and **(ii) other waterway on any inland water**, provided under the respective Laws.

14.1 Clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985, defines the “**National waterways**” as under:

(h) “**national waterways**” means the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldia Stretch of the Ganga-Bhagirathi-Hooghli River) Act, 1982 (49 of 1982), to be a national waterway.

Explanation.-If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway-(i) shall be deemed also to be a national waterway within the meaning of this clause; and (ii) the provisions of this Act shall-----.

14.1.1 The Government of India has also enacted the National Waterways Act, 2016. Section 4 of the National Waterways Act, 2016 amended Section 2(h) of the Inland Waterways Authority of India Act, 1985. Accordingly, Section 2(h) of the Inland Waterways Authority of India Act, 1985, now reads as under:

(h) “**national waterways**” means the inland waterway declared by section 2 of the National Waterway Act, 2016, to be a national waterway.

Explanation.-If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway-

- (i) shall also be deemed to be a national waterway within the meaning of this clause; and
- (ii) the provisions of this Act shall, with necessary modifications (including modification for construing any reference to the commencement of this Act as a reference to the date aforesaid), apply to such national waterway;’

Section 2 of the National Waterways Act, 2016 reads as under:

2.

- 1) The existing national waterway specified at serial numbers 1 to 5 in the Schedule along with their limits given in column (3) thereof, which have been declared as such under the Acts referred to in sub-section (1) of section 5, shall, subject to the modifications made under this Act, continue to be national waterways for the purposes of shipping and navigation under this Act.
2. The regulation and development of the waterways referred to in sub-section (1) which have been under the control of the Central Government shall continue, as if the said waterways are declared as national waterways under the provisions of this Act.
3. The inland waterways specified at serial numbers 6 to 111 in the Schedule along with their limits given in column (3) thereof are hereby declared to be national waterways for the purposes of shipping and navigation.

14.1.2 In the *Schedule to the National Waterways Act, 2016*, at Sr. No.100, National Waterway 100 is as under, which is, *interalia*, declared to be inland waterway. It reads as under:

Sr. No.	National Waterway	
100	National Waterway 100	<u>Tapi River:</u> <i>Hatnur Dam Near Mangalwadi Lat 21° 04'22"N, Lon75° 56'45" E to Gulf of Khambhat (Arbian Sea) at Lat 21° 02'16"N, Lon72° 39'30"E.</i>

14.1.3 It is worthwhile to mention here that as per the *Google Earth Map*, the General Lighterage Area of Magdalla Port (where the Mother Vessels are anchored), **does not fall within the limit of the National Waterway 100-Tapi River as declared vide the National Waterways Act, 2016.**

14.2 Now, we come to the definition of the “**Other waterway on any inland water**”. Clause (b) of Section 2 of the Inland Vessel Act, 1917, defines “**Other waterway on any inland water**”, as below:

(b) “**inland water**” means-

- i. any canal, river, lake or **other navigable water within a State**,
- ii. any area of any tidal water deemed to be the inland water as defined by the Central Government under section 70;
- iii. waters declared by the Central Government to be smooth and partially smooth waters under clause (41) of Section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

14.2.1 The 1st category of the term “*inland water*” comprises of “*any canal, river, lake or other navigable water within a state*”, as mentioned herein above. According to this, waterways on any canal, river, lake or other navigable water within a state, will be the part of “**Other waterway on any inland water**”.

14.2.2 In this regard, we find that the applicant is providing service relating to transportation of goods in the water way, i.e. from Magdalla Port to its General Lighterage Area (Anchoring Point of Mother Vessel) or vice versa. **This waterway is a part of the Arabian Sea.** Whereas, the term “*Other waterway on any inland water*” covers any canal, river, lake or other navigable water **within a State only**. The length of the waterway, between which the service of transport is performed by the applicant, **is the part of the “Arabian Sea” and not a part of any canal, river, lake or other navigable water within a State. Thus, their contention, that the transportation is being done on the River Tapi, appears to be incorrect.**

14.3 As regard the contention that the entire activity is being done by them under territorial water only, it is worthwhile to mention that the *Arbian Sea* is

not a part of the State of Gujarat and, hence, not covered under the term “Other waterway on any inland water” so as to be eligible for exemption of the Services by way of transportation of goods by **inland waterways**.

14.4 Thus, we find that the service of transportation of goods in barrages from mother vessel to daughter vessel from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port does not get covered in the definition of ‘other waterway on any inland water’, as defined under Clause (b) of Section 2 of the Inland Vessel Act, 1917.

15. In view of the above, we conclude that the service of transportation of goods in barrages from mother vessel to daughter vessel from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port is neither covered in the definition of ‘national waterways’, as defined in Clause (h) of section 2 of the Inland Water Ways Authority of India Act, 1985 nor covered in the definition of ‘other waterway on any inland water’, as defined under Clause (b) of Section 2 of the Inland Vessel Act, 1917. Consequently, the same does not qualify for exemption contained at Sr. No. 18 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

16. In light of the foregoing, we rule as under –

R U L I N G

Ques.1: Whether the service of transportation of goods from Magdalla Port, Surat to its General Lighterage Area of Magdalla Port (From where the Mother Vessel are anchored) or vice versa, is covered under exemption contained at Sr. No. 18 of Notification No. 12/2017-Central Tax (Rate)?

Answer: Answered in the negative, as discussed above.

Ques. 2: Whether the service of above transportation falls in the definition of ‘Inland waterways’?

Answer: Answered in the negative, as discussed above.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 19.05.2020.