

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



ADVANCE RULING NO. GUJ/GAAR/R/12/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/41)

Date: 27.01.2021

Name and address of the applicant	:	M/s. Manoj Bhagwan Mansukhani (M/s. Rishi Shipping), Plot No.113-116, Rishi House, Ward No.6, Industrial area, Gandhidham, Kutch-370201.
GSTIN of the applicant	:	24ABCPM8333P1ZA
Date of application	:	25.06.2019.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of a notification issued under the provisions of this Act. (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.
Date of Personal Hearing	:	23.12.2020
Present for the applicant	:	Shri Amish Khandhar C.A / Rashmin Vaja C.A

BRIEF FACTS

The applicant M/s. Manoj Bhagwan Mansukhani(M/s.Rishi Shipping), Plot No.113-116, Rishi House, Ward No.6, Industrial area, Gandhidham, Kutch-370201 is service provider operating in Kandla port; that till this time they were handling imported fertiliser in bulk of Indian fertiliser companies, importing fertiliser from abroad and on their behalf they used to discharge bulk fertiliser from the vessels, packing it into bags and then make despatches by Rail, Road and water; that recently Government has allowed foreign suppliers to send bulk fertiliser for value addition and store in Custom Bonded warehouse without payment of the custom duty and GST and after packing bulk fertiliser, they are to stuff the fertiliser in bags into containers and despatch the same to same foreign suppliers or to his order; that since party is sending bulk fertiliser for only job work in custom bonded godowns and paying them about 9.8 USD per MT for services, they are to return the same and charge them only USD 9.8 per MT.

2. The applicant has submitted that the foreign supplier cannot afford to pay GST on their service charges as their services are rendered on foreign goods in custom bonded warehouses; that the cargo will go directly from vessel to custom bonded warehouses and these goods never cross the customs barrier and mix-up with the indigenous goods; that these goods were temporarily imported to India for export purpose and stored in customs bonded warehouses and exported from there to outside India. The applicant has stated that they as the service providers do stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods which are temporarily imported. The applicant has asked the following questions seeking Advance Ruling on the same:

“1. Whether above described services(in brief facts) considered to be Export of Service or not?”

2. If Yes, then we are eligible for Zero Rated Supply under Section 16 of the IGST Act, 2017?”

3. The applicant has submitted his view point in respect of the above and stated that in their view, their services qualify as Export of Service and has given point-wise justification as to why their supply qualifies as export of service and zero duty under Section 16(1)(a) of the IGST Act, 2017 is chargeable. They have stated that they are eligible for Zero rated duty because they fulfil all the five clauses of Section 2(6) of the IGST Act, 2017 and for the sake of reference, they have reproduced the same as below:

2(6) “export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;*

3.1 The applicant has referred to Section 2(14) of the IGST Act, 2017 which defines the location of recipient of services which is as under:

(14) “location of the recipient of services” means,—

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;*
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and*
- (d) in absence of such places, the location of the usual place of residence of the recipient;*

The applicant has reproduced the Explanation-1 to Section-8 as below:

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;*
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,*

then such establishments shall be treated as establishments of distinct persons.

3.2 The applicant has submitted that in their view, to qualify any supply of service as export of service, it is required to meet all five clauses of Section 2(6) of IGST Act, 2017:

- (i) They are a registered dealer located and operating from India.
- (ii) The location of Service Recipient will be the location of usual place of residence which is UAE, as per Section 2(14)(d) of IGST Act, 2017.
- (iii) The place of Supply of Services will be considered to be out of India because the second proviso to Clause(a) sub-section(3) of Section 13 inserted w.e.f. 01st February, 2019 carve out an exception to Rule that Services actually performed be considered Place of Supply, hence in

their case general rule specified under Section 13(2) of IGST Act, 2017 will apply which will be the location of the service recipient that will be his usual place of residence.

- (iv) They will receive their Service Charge in convertible Foreign Exchange.
- (v) The contract with Rishi Shipping and Overseas suppliers(Non-residents) are on Principle to Principle basis and at arm's length distance.

3.3 The applicant has further submitted that the cargo (goods temporarily imported) will go directly from vessel to custom bonded warehouses and never crosses customs barrier and mix-up with indigenous goods; that these goods are ultimately for export purpose and are temporarily coming to India for warehousing and jobbing purpose; that the Hon'ble Authority will appreciate the fact that the intention of legislature is to enhance export of goods and services, not to export burden of tax that's why in law provision for Zero rated supplies was incorporated. The applicant has submitted photocopies of the following documents:

- (i) Warehousing cum job-work agreement between M/s. R.E.Energy FZE, Dubai and M/s. Rishi Shipping as well as samples of invoice, bill of lading, Bill of Entry for Warehouse in respect of M/s. R.E.Energy FZE, Dubai.
- (ii) Warehousing cum job-work agreement between M/s. Sun International, FZE, Dubai and M/s. Rishi Shipping.
- (iii) Warehouse License Number:PRIVATE/02/2019 dated 03.07.2019 issued to Rishi Shipping by Assistant Commissioner(Bond), Custom House, Kandla.

4. The applicant vide their additional submission dated 04.01.2021 (received vide email on 08.01.2021) has submitted photocopies of the Warehouse cum job-work agreements made with the following clients as well as sample copies of the Bills of supply issued by the applicant to these clients:

- (1) Agreement dated 03.07.2019 with APS Container Line DMCC, Dubai, UAE.
- (2) Agreement dated 09.01.2019 with Globcom International FZC, Sharjah, UAE.
- (3) Agreement dated 10.06.2019 with RE Energy FZE, Sharjah, UAE.
- (4) Agreement dated 15.06.2019 with Sun International FXE, Dubai, UAE.
- (5) Agreement dated 18.12.2019 with Swiss Singapore Overseas Enterprises PTE Ltd., Singapore.

DISCUSSION & FINDINGS:

5. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Amish Khandhar and Rashmin Vaja at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

6. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to similar provisions of the GGST Act. However, since the present application submitted by the applicant deals with export of services i.e. supply of services to persons located outside India, we will be required to make references to the IGST Act, 2017 as well as the Notifications of Integrated Tax(Rate) issued under the said Act.

7. On going through the submission of the applicant, we find that the applicant was operating in Kandla who till this time, were handling imported fertiliser in bulk of Indian fertiliser companies, importing fertiliser from abroad and on their behalf they used to discharge bulk fertiliser from the vessels, packing it into bags and then make despatches by Rail, Road and water. Recently Government has allowed foreign suppliers to send bulk fertiliser for value addition and store in Custom Bonded warehouse without payment of the custom duty and GST and after packing bulk fertiliser, they are to stuff the fertiliser in bags into containers and despatch the same to same foreign suppliers or to his order and since party is sending bulk fertiliser for only job work in custom bonded godowns and paying them about 9.8 USD per MT for services, they are to return the same and charge them only USD 9.8 per MT. As per the applicant, the foreign supplier cannot afford to pay GST on their service charges as their services are rendered on foreign goods in custom bonded warehouses and the cargo will go directly from vessel to custom bonded warehouses, that these goods never cross the customs barrier and mix-up with the indigenous goods and that these goods were temporarily imported to India for export purpose and stored in customs bonded warehouses and exported from there to outside India. The applicant has stated that they as the service providers do stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods which are temporarily imported. As per the explanation offered by the applicant, they are of the view that the aforementioned services provided by them is covered under export of services since they fulfil all the 5 clauses for export as per the provisions of Section 2(6) of the IGST Act, 2017. The applicant has asked the following questions seeking Advance Ruling on the same:

- “1. Whether above described services (in brief facts) considered to be Export of Service or not?”*
- 2. If Yes, then we are eligible for Zero Rated Supply under Section 16 of the IGST Act, 2017?”*

8. We have gone through the photocopies of various Warehouse-cum-jobwork agreements made by the applicant in respect of their various clients as mentioned in para-4 above. We have gone through the copy of Warehouse License Number: PRIVATE/02/2019 dated 03.07.2019 issued by the Assistant Commissioner(Bond), Custom House, Kandla under which the warehouse of the applicant has been licensed as a Private Bonded Warehouse. We have also gone through the sample copies of the bills of supply issued by the applicant to these clients in respect of the services rendered by them and find that the values mentioned therein is in dollars. We also find that as mentioned in a couple of the aforementioned agreements, M/s. Rishi Shipping(the applicant) is a well-known entity in the business of warehousing and storage activities of tradable commodities and also undertakes job work for fertilizer commodities such as handling, packing and despatches at Kandla Port, India. Further, as per the aforementioned agreements, the clients of the applicant will dispatch fertilizers cargo in bulk by vessel calling Kandla port and the applicant will make arrangements for stevedoring of the same and safely transport the goods to custom bonded warehouse and protect cargo, maintaining security. These clients require to deliver cargo in smaller lots to their buyers in bulk and bags for which they are required to seek services of the applicant for storage of their cargo in custom bonded warehouse in Kandla and dispatch through containers, barges and ships to their ultimate buyers in bulk and/or after bagging in custom bonded warehouse, and all the trade and shipping documents are to be raised on the clients. In view of the above, it appears that the aforementioned goods are being temporarily imported into India, stored in the custom bonded warehouses, and thereafter, are exported to their ultimate buyers as per the instructions of their clients. As per the agreements, the main activities to be undertaken by the applicant are as under:

- (a) Proper discharge of cargo from vessel.
- (b) Proper storing of cargo at the custom bonded warehouse.
- (c) Bagging as per requirement of the client.
- (d) Dispatch cargo as per requirement within 2/3 months from discharge.
- (e) Act as agent for the Client and follow instructions for negotiations of freight of containers, purchase of empty bags locally or purchase of any other product, if the Client so desires.

Further, as per the terms of the agreement, the parties will pay the applicant in US dollars/per metric tons (the rate varies from client to client) for the following services:

- (a) Stevedoring.
- (b) Transportation from port to Warehouse.
- (c) Storage Charges.
- (d) Service charges as agent.
- (e) Bagging Charges.
- (f) Stuffing bags in containers.

9. On going through the aforementioned activities undertaken by the applicant, we find that the fertilizers/goods are discharged from the vessel, brought from the vessel to the custom bonded warehouse, packed in smaller bags as per the requirement of the client and thereafter dispatched from the warehouse after 2/3 months (as per instructions of their clients) for export to the ultimate buyers of the clients of the applicant. It is therefore, apparent that the aforementioned fertilizers/goods never cross the customs barrier and mix-up with the indigenous goods as these goods were temporarily imported to India (for export purpose) and stored in customs bonded warehouses and exported from there to outside India.

10. Now, as per the question asked by the applicant seeking Advance Ruling, they want to know whether the services such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which are temporarily imported) provided by them can be considered as export of services or not. For this purpose, we will first be required to refer to Section 2(6) of the IGST Act, 2017 which lays down the conditions to be fulfilled for being an export of services. Section 2(6) of the said Act reads as under:

“2(6) “export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;”*

11. We find that services provided by the applicant can be covered under ‘export of service’, if and only, if all the five conditions cited above are fulfilled/satisfied. Therefore, in order to confirm as to whether the services rendered by the applicant in the instant case, fulfil the aforementioned conditions or otherwise, the aforementioned conditions for ‘export of service’ needs to be compared to the issue in hand. On comparing the same, we find that the supplier, being the applicant in the instant case, is located in India. Also, on going through the sample copies of the bills of supply, issued by the applicant to their clients, in respect of the services rendered to them, we find that the value mentioned therein is in dollars i.e. it can be derived that the payment is in convertible foreign exchange. We, therefore, find that conditions

(i) and (iv) are fulfilled/satisfied. However, as per condition (ii) above, the location of the recipient of service is required to be located. For the purpose, we find it necessary to refer to the definition of 'location of the recipient of services' as per the IGST Act, 2017. Definition of 'location of the recipient of services' is mentioned at Section 2(14) of the IGST Act, 2017 and reads as under:

“(14) “location of the recipient of services” means,—

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;”

12. On going through the above provisions and comparing the same to the issue in hand, we find that the service recipients (the clients of the applicant located outside India in the instant case) **neither** have a place of business in India for which registration has been obtained **nor** do they have any place of business other than the place of business for which registration has been obtained, in India. In view of the above, we find that the conditions (a) and (b) are not applicable in the instant case. Further, since condition (c) above is also linked to (a) and (b), the said condition can also not be made applicable to the instant case. We, therefore, conclude that only condition (d) which states that *in absence of such places as mentioned at (a), (b) and (c) above, the location of the usual place of residence of the recipient*, is applicable in the instant case. In view of the facts mentioned above, we find that the place of supply of services, in the instant case, will be the location of the recipient of services i.e. out of India. We therefore find that condition (ii) of Section 2(6) of the IGST Act, 2017 is also fulfilled.

13. Further, as per condition (v) of Section 2(6) of the IGST Act, 2017, the supplier of service and the recipient of service should not merely be establishments of a distinct person in accordance with Explanation 1 in section 8 to fulfil the condition of 'export of service'. Therefore, in order to find out what 'establishments of a distinct person' stands for, we will be required to refer to Explanation 1 of Section 8 of the IGST Act, 2017 which reads as under:

“Explanation 1.—For the purposes of this Act, where a person has,—

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

14. On comparing the aforementioned conditions to the issue in hand, we find that since (ii) pertains to two different establishments within India i.e. one located within the state/union territory and the other located outside the state/union territory and (iii) pertains to one establishment located in a State or Union territory and another establishment i.e. a business vertical registered within that State or Union territory, these two conditions do not pertain to the issue in hand, since the supplier of service is located in India and the service recipient is located outside India. Further, on comparing (i) above to the issue in hand, we find that on going through the copies of the agreements submitted by the applicant, it is very much apparent that the establishments of the

service recipients (which are located outside India), are not establishments, which are in any way, related to the establishment of the supplier located in India i.e. they are not establishments of a distinct person. It can therefore, be easily derived from the above that the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8. We, therefore, find that condition(v) of Section 2(6) of the IGST Act, 2017 above has also been fulfilled/satisfied. However, as per condition(iii) above, we find that the place of supply of service has to be located outside India for the services rendered to be covered under 'export of service'. So, in order to determine the place of supply in the instant case, we will be required to refer to Section 13 of the IGST Act, 2017 which helps to determine the place of supply of services in instances where the location of supplier of services or the location of the recipient of services is outside India. Section 13 of the IGST Act, 2017 reads as under:

"13. (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:—

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.—For the purposes of this sub-section, the expression,—

(a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;

(c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;

(d) “non-banking financial company” means,—

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:—

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.”

15. On going through the above, we find that as per Sub-section (2) of Section 13, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services, provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. However, since the location of the recipient of services is available as discussed earlier in the instant case i.e. outside India, we will have to find out under which sub-section of Section-13 the services provided by the applicant falls. We find that the services such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which have been temporarily imported into India as discussed earlier) would fall under sub-section(3) of Section 13, since the goods are required to be made physically available by the recipient of services to the supplier of services in order to enable the supplier to supply the aforementioned services. Section 13(3)(a) reads as under:

13(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

16. We, however, find, that there is an exclusion clause in the second proviso to sub-section 3(a) which states that “*nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after **repairs** without being put to any other use in India, than that which is required for such **repairs***”. To discuss whether the services rendered by the applicant is covered under ‘repairs’ or otherwise, we find it necessary to refer to the dictionary meaning of ‘repairs’ since the definition of the same is not appearing under the CGST Act or IGST Act of 2017. As per Cambridge dictionary, the meaning of ‘repairs’ reads as under:

“to put something that is damaged, broken, or not working correctly, back into good condition or make it work again.”

17. On comparing the services such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which have been temporarily imported into India) rendered by the applicant to the aforementioned meaning of ‘repairs’, it can very clearly be concluded, that these services cannot be covered under ‘repairs’ by any stretch of imagination. Therefore, in view of sub-section (3) of Section 13, the place of supply of the services, in the instant case, shall be the location where the services are actually performed i.e. in India. We, therefore, conclude that condition(iii) of Section 2(6) of the IGST Act, 2017 has not been fulfilled in the instant case since the location of supply of service is not located outside India but in India and therefore the services rendered by the applicant will not be covered under ‘export of services’. In view of the above, the result of the comparison of the conditions of export as envisaged in Section 2(6) of the IGST Act, 2017 vis-a-vis the activities/services rendered by the applicant in the instant case, are as under:

- (i) The applicant is a registered person located and operating from India.
- (ii) The location of Service Recipient will be the location of usual place of residence which is out of India, as per the provisions of Section 2(14)(d) of IGST Act, 2017.
- (iii) The place of Supply of Services will be considered to be in India as per Section 13(3)(a) of the IGST Act, 2017 since the second proviso to Clause(a) sub-section(3) of Section 13 is not applicable to the applicant.
- (iv) The payment of the services rendered by the applicant is received by the applicant in convertible foreign exchange as is apparent from the copies of bills of supply submitted by the applicant wherein the value of supply is mentioned in dollars.
- (v) The supplier of the service (the applicant) as well as the recipients of service (their clients) are not merely establishments of a distinct person in accordance with Explanation 1 of Section 8 of the IGST Act, 2017 as is apparent from the copies of the warehouse cum job-work

agreement made by the applicant with their Overseas suppliers(Non-residents) and are not related to each other.

In view of the above, we conclude that the services rendered by the applicant are not covered under 'Export of services' as envisaged in Section 2(16) of the IGST Act, 2017.

18. Further, we find that as per Integrated Goods and Services Tax (Amendment) Act, 2018 (32 of 2018), there is an amendment in the second proviso to sub-section (3) of Section 13 of the IGST Act, 2017(which has come into force w.e.f. 01.02.2019 as per Notification No.01/2019-Integrated Tax dated 29.01.2019). After amendment, the second proviso to sub-section(3) of Section 13 reads as under:

*“Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are **temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process** without being put to any other use in India, other than that which is required for such repairs or treatment or process;”*

19. On going through the amended version of the second proviso to sub-section(3) of Section 13 above, we find that two new words 'treatment' and 'process' have been added to it. Since, it has already been decided that the services rendered by the applicant cannot be termed as 'repairs', we are required to find out whether they are covered under the terms 'treatment' or 'process'. We are, therefore, required to find out the meaning of 'treatment' and 'process' as per dictionary as the said words are not defined in the CGST Act or IGST Act of 2017. As per Merriam Webster dictionary, 'treatment' is defined as under:

“(i)the act or manner or an instance of treating someone or something

(ii)conduct or behavior towards another

(ii)the action or manner of dealing with something (such as a topic) often in a specified way

(iv)something (such as a product or technique) used in treating, enhancing, or improving the performance, condition, or appearance of someone or something

As per Collins dictionary, 'process' is defined as under:

(i)A process is a series of actions which are carried out in order to achieve a particular result.

(ii)A process is a series of things which happen naturally and result in a biological or chemical change.

20. On comparing the services provided by the applicant to the various definitions of 'treatment' as mentioned hereinabove, we find that the said services cannot be said to pertain to any treatment on the goods. Further, on comparing the services provided by the applicant to the definitions of 'process' as mentioned hereinabove, we find that the definition at (i) above is applicable to them, as it mentions that **a process is a series of actions which are carried out in order to achieve a particular result.** We find that we can draw parallel from the above definition, to the series of actions i.e. activities/services undertaken by the applicant such as: (i) stevedoring, transportation of the fertilizers/goods from the vessel to the warehouse and services rendered such as storage, bagging, stuffing of the said fertilisers/goods at the warehouse resulting in the storing of cargo in the custom bonded warehouse (ii) removal of the said goods from the said warehouse by again transporting the goods (which have been temporarily imported into India) from

the custom bonded warehouse as per requirement of the client and dispatch of cargo as per requirement within 2/3 months(for export) resulting in the export of the goods to the ultimate buyer from the custom bonded warehouse. Thus, it can be derived that the activities/services rendered by the applicant as mentioned above can be covered under the definition of 'process'. Further, as discussed earlier, the applicant undertakes job work for fertilizer commodities such as handling, packing and dispatches at Kandla Port. Further, it is very much apparent from the copies of the agreements submitted by the applicant containing the heading '**Warehouse cum job-work Agreement**', that these agreements, undoubtedly involve jobwork. Definition of 'jobwork' appears in Section 2(68) of the CGST Act, 2017 which reads as under:

"2(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly."

21. From the above, it can be seen that 'jobwork' includes any treatment or process undertaken by a person on goods belonging to another registered person. It can therefore, be derived from the above that the activities/services rendered by the applicant such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which have been temporarily imported into India) is covered under the definition of 'process' (as discussed earlier) and therefore would be also covered under the definition of jobwork. We, therefore, conclude that the second proviso to sub-section(3)(a) of Section 13 of the IGST Act, 2017 (as amended w.e.f. 01.02.2019) is squarely applicable to the applicant. Therefore, the services provided by the applicant will fall out of the purview of sub-section 3(a) of Section 13 of the IGST Act, 2017 w.e.f. 01.02.2019 and would now come under the purview of sub-section(2) of Section 13 of the IGST Act, 2017 which reads as under:

"(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services."

22. On comparing the aforementioned provisions to the issue in hand, we find that the 'location of the recipient of services' has already been discussed in para-11 above wherein it has been determined that the location of the recipient of service is the location of the usual place of residence of the recipient i.e. outside India. In view of the above, we conclude that the place of supply of the services in the instant case will be the usual place of residence of the recipient i.e. outside India and therefore, condition (iii) of the provisions of Section 2(6) of the IGST Act, 2017 have been fulfilled. In view of the above, the result of the comparison of the conditions of 'export of service' as envisaged in Section 2(6) of the IGST Act, 2017 vis-a-vis the activities/services rendered by the applicant in the instant case, w.e.f. 01.02.2019 are as under:

- (i) The applicant is a registered person located and operating from India.
- (ii) The location of Service Recipient will be the location of usual place of residence which is out of India, as per the provisions of Section 2(14)(d) of IGST Act, 2017.
- (iii) The place of Supply of Services will be considered to be out of India in view of the amended second proviso to Clause(a) sub-section(3) of Section 13 inserted w.e.f. 01.02.2019, hence in this case, general rule specified under Section 13(2) of IGST Act, 2017 will apply which will be the location of the service recipient which is outside India.
- (iv) The payment of the services rendered by the applicant is received by the applicant in convertible foreign exchange as is apparent from the copies of bills of supply submitted by the applicant wherein the value of supply is mentioned in dollars.

- (v) The supplier of the service (the applicant) as well as the recipients of service (their clients) are not merely establishments of a distinct person in accordance with Explanation 1 of Section 8 of the IGST Act, 2017 as is apparent from the copies of the warehouse cum job-work agreement made by the applicant with their Overseas suppliers(Non-residents) and are not related to each other.

23. In view of the facts mentioned above, the answer to the first question asked by the applicant seeking Advance Ruling is that the aforementioned services of stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods which are temporarily imported, would not be considered as 'Export of service' for the period prior to 01.02.2019 but would be considered as 'Export of service' w.e.f. 01.02.2019 onwards.

24. Now, we move to the second question of the applicant which is connected to the first question and states that if the answer to the first question is yes, whether they are eligible for Zero rated Supply under Section 16 of the IGST Act, 2017. For this purpose, we will be required to refer to Section 16 of the IGST Act, 2017 which reads as under:

16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder

25. On going through the above provisions of Section-16 of the IGST Act, 2017, we find that since it has determined that the services provided by the applicant are covered under 'export of service' w.e.f. 01.02.2019, they will be covered under the provisions of Section 16(1)(a) as export of services w.e.f. 01.02.2019. As regards the eligibility of the applicant for 'Zero rated supply' under Section 16 of the IGST Act, 2017, we find that the applicant shall not be eligible for 'Zero rated supply' as per the provisions of the said section upto 31.01.2019. However, they will be eligible for 'Zero rated supply' as per the provisions of Section 16(1)(a) of the IGST Act, 2017 w.e.f. 01.02.2019

26. In light of the above circumstances, we rule, as under –

R U L I N G

Question-1: Whether above described services(in brief facts) considered to be Export of Service or not?

Answer: The services such as stevedoring, transportation, storage, bagging, stuffing and again transportation of the goods (which have been temporarily imported into India) rendered by the applicant M/s. Manoj Bhagwan Mansukhani (M/s.Rishi Shipping), Plot No.113-116, Rishi House, Ward No.6,

Industrial area, Gandhidham, Kutch-370201 shall not be considered as 'export of service' upto 31.01.2019, but shall be considered as 'export of service' w.e.f. 01.02.2019 onwards, for the reasons discussed hereinabove.

Question-2: If Yes, then we are eligible for Zero Rated Supply under Section 16 of the IGST Act, 2017?"

Answer: The applicant will not be eligible for 'Zero rated supply' under Section 16 of the IGST Act, 2017, upto 31.01.2019 for the reasons discussed hereinabove. However, they shall be eligible for 'Zero rated supply' as per the provisions of Section 16(1)(a) of the IGST Act, 2017 w.e.f. 01.02.2019, for the reasons discussed hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 27.01.2021.