

GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/52/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/17)

Date: 30.07.2020

Name and address of the applicant	:	M/s Balkrishna Industries, Bhuj Bachhau Road, Bhuj Sate Highway No.42, Village-Paddhar, Taluka- Bhuj, Dist.-Kutch (Gujarat).
GSTIN of the applicant	:	24AAACB3333J1Z2
Date of application	:	28.02.2019
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 the Act.
Date of Personal Hearing	:	09.07.2020 (through Video Conferencing)
Present for the applicant	:	Shri Satish Talnilar

BRIEF FACTS

The applicant submitted that they, M/s Balkrishna Industries, Mumbai, are one of the leading manufacturer and exporters of Tyres mainly used for special application such as agricultural tractors and their various attachments, industrial and construction equipment etc.. They export more than 85% of their production all over the world including the developed countries viz. UK, USA, France, Germany, Australia etc.. They have been accredited as an ISO-9001-2000-Quality Management System and ISO 14001:2015 standard for Environmental Management Systems are accredited with prestigious status as “Four Star Export House”.

2. They sought for advance ruling in respect of following questions:

Question 1: Whether availing exemption under Notification No.79/2017-Cus dated 13.10.2017 in respect of additional duty of customs under sub-Section (1), (3) and (5) of Section 3, anti-dumping duty under section 9A, but opting to pay IGST on the import of goods under Advance Authorization, would tantamount to availing the benefits of exemption under Notification No.79/2017-Cus dated 13.10.2017, as contemplated under Rule 96(10) of CGST Rules, 2017?

Question 2: If the answer to the above question is negative, then whether the applicant is allowed to export goods on payment of IGST and claim refund thereof under Rule 96(10) of CGST Rules, 2017?

Statement of relevant facts having bearing on the question(s) related:

3. The applicant is a manufacturer of specialized pneumatic tires falling under HS Code 4011 for industrial, mining and agricultural applications of having a prestigious 4-Star Export House Status granted by the Ministry of Commerce. The applicant exports almost 85% of the production to various countries of the world. The applicant imports various raw materials under Advance Authorization scheme in which basic customs duty is exempted in terms of Notification No. 18/2015-Cus dated 01.04.2015 and additional duty of customs under Sub-sections (1), (3) and (5) of Section 3, Integrated GST under Sub-section (7) of Section 3 and anti-dumping duty under Section 9A are exempted under Notification No.79/2017-Cus dated 13.10.2017. As per condition No. (vi) (a) of the Notification No.18/2015-Cus, if the goods are imported after the discharge of export obligation in full, and if the facility of input tax credit under GST law on inputs used for manufacture and supply of goods exported has been availed, then the importer, at the time of clearance of imported material, is required to furnish a bond binding himself to use the imported materials in his factory for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and submit a certificate from a chartered accountant within six month from the date of clearance of the said materials to the effect that the said imported materials have been used. Further, as per the proviso to this condition, if the importer pays integrated tax leviable on the imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition.

3.1 The applicant further submitted that since it is cumbersome for him to maintain two separate records in respect of materials imported before the discharge of export obligation in full, and the materials imported after discharge of export obligation in full, he has opted to pay integrated tax on both the types of materials imported, before discharge as well as after discharge, of export obligation in full. Since, the integrated tax has been paid on such imported materials, he is also not required to furnish a bond to the Customs at the time of clearance of materials.

4. Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s):

4.1 The applicant has submitted that it has been clarified in para 5 of the Board' Circular No.59/33/2018-GST dated 04.09.2018, that the importers who are directly importing supplies on which benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of integrated tax paid on export. They further submitted

that one of the specified notifications in Rule 96(10) is 79/2017-Cus, which exempts certain specified duties of Customs and IGST. The applicant further stated that they felt that the restriction under Rule 96(10) seeks to prevent the exporter from claiming refund of IGST paid on the exports, if he has received the goods (i.e. inputs) which are exempted or nil rated or the supplier has paid the tax at reduced rate on the same. This has been clarified in the earlier Board's Circular No.45/19/2018-GST dated 30.05.2018. The applicant is of the opinion that the term 'tax' referred to in these circulars is the 'Goods and Service Tax'. In case of imports, the GST payable is 'integrated tax' under Sub-section (1) of Section 5 of the IGST Act, 2017. The applicant is opting to pay IGST on their imports, but avails exemption on other applicable customs duties in terms of the Notification No.79/2017-Cus dated 13.10.2017. Thus, the applicant has received (imported) the goods on which the tax (IGST) has been paid and, therefore, according to them, they cannot be held to have availed the 'benefits of the Notification No.79/2017-Cus dated 13.10.2017', as contemplated in Rule 96(10) of CGST Rules, 2017. Further, the exemption on additional duties of Customs and anti-dumping duty are governed by the Customs Act, 1962 as well as Customs Tariff Act, 1975 and cannot be denied by the GST Act, 2017 and the Rules made thereunder. Consequently, according to them, they can export the goods on payment of IGST and claim refund thereof under Rule 96(10) of the CGST Rules, 2017.

4.2 The applicant has further submitted that further to clarify, w. e. f. 10.01.2019, vide Notification No. 01/2019-Cus dated 10.01.2019, 'pre-import condition' has been removed, resulting in granting exemption from payment of IGST on imports under advance authorization irrespective of whether the import is pre-import based or otherwise. However, for, the imports after discharge of export obligation in full, a condition of furnishing CA certificate confirming the use of such imported goods for manufacture and supply of taxable goods has been specified. Since, they have a huge volume of imports and exports, it is very inconvenient for them to get CA certificate for every import consignment and submit to Customs, they have opted to pay IGST on all the imports under Advance Authorization and avail input tax credit thereon. Thus, the exemption from payment of IGST on imports under Advance Authorization is conditional, and, therefore, the availment thereof is not mandatory.

4.3 The applicant has further submitted that in addition to this, filing of refund claim for ITC under Rule 89 is manual and requires submission of a huge number of documents. As against this, the refund sanctioning process of IGST under Rule 96(10) is fully automatic and does not require submission of

any documents. Also, the refund sanctioning process under Rule 96(10) is quite speedy and *hastle-free* as compared to the one Rule 89 where, the tax payer has to deal with two different authorities viz. Central GST and State GST for getting the refund. The applicant, therefore, wishes to claim the refund of IGST under Rule 96(10) of CGST Rules, 2017.

5. At the time of personal hearing held through Video Conferencing on 09.07.2020, the Authorised Representative of the applicant, Shri Satish Talnilar reiterated the facts as stated in the Application and as mentioned herein above.

DISCUSSION & FINDINGS:

6. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

6.1 At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act 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 the same provisions under the GGST Act.

7. In this case, moot points are to be decided as to whether availing exemption under Notification No.79/2017-Cus dated 13.10.2017 in respect of additional duty of customs, anti-dumping duty, but opting to pay IGST on the import of goods under Advance Authorization, would tantamount to availing the benefits of exemption under Notification No.79/2017-Cus dated 13.10.2017, as contemplated under Rule 96(10) of CGST Rules, 2017 and in such case as to whether the applicant is allowed to export goods on payment of IGST and claim refund thereof under Rule 96(10) of CGST Rules, 2017.

8. As per the facts stated in the application, the applicant is a manufacturer of specialized pneumatic tires falling under HS Code 4011 for industrial, mining and agricultural applications of having a prestigious 4-Star Export House Status granted by the Ministry of Commerce. The applicant exports almost 85% of the production to various countries of the world. The applicant imports various raw materials under Advance Authorization scheme in which basic customs duty is exempted in terms of Notification No. 18/2015-Cus dated 01.04.2015 and additional duty of customs under Sub-sections (1), (3) and (5) of Section 3, Integrated GST under Sub-section (7) of Section 3 and

anti-dumping duty under Section 9A are exempted under Notification No.79/2017-Cus dated 13.10.2017.

8.1 Further, the applicant is opting to pay IGST on their imports, but avails exemption on other applicable customs duties in terms of the Notification No.79/2017-Cus dated 13.10.2017. Thus, the applicant has received (imported) the goods on which the tax (IGST) has been paid and, therefore, according to them, they cannot be held to have availed the 'benefits of the Notification No.79/2017-Cus dated 13.10.2017', as contemplated in Rule 96(10) of CGST Rules, 2017. Further, the exemption on additional duties of Customs and anti-dumping duty are governed by the Customs Act, 1962 as well as Customs Tariff Act, 1975 and cannot be denied by the GST Act, 2017 and the Rules made thereunder. Consequently, according to them, they can export the goods on payment of IGST and claim refund thereof under Rule 96(10) of the CGST Rules, 2017.

9. We note that for implementing the scheme of duty-free import, **Notification No. 18/2015-Customs dated 1st April, 2015** was issued under the Customs Act, 1962. This Notification exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act.

9.1 Subsequent to the introduction of Goods and Service Tax regime, Integrated GST (IGST) was applicable on import of inputs under Advance Authorisation as the above notification was not amended to provide for IGST exemption. Subsequent to exporters' representations, Notification No. 79/2017-Customs dated 13th October, 2017 was issued amending the above Notification No.18/2015-Customs to allow exemption from the IGST and Compensation Cess on import of goods related to Advance Authorisation(AA). Further, as per the condition (xiii) inserted vide Notification No.79/2017-Customs, the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018. Further, vide **Notification No. 35/2018-Customs dated 28th March, 2018**, the exemption from integrated tax and the goods and services tax compensation cess leviable thereon is extended up to the 1st October, 2018.

10. In order to appreciate the issue, it is relevant to peruse the amendments made in Rule 96 of CGST Rules, 2017 from time to time and clarification issued by the CBEC, which are reproduced herein below:

(i) Notification No.3/2018-Central Tax dated 23.01.2018 amended Rule 96 with retrospective effect from October 23, 2017 and inserted sub-rule (10) to state that the persons claiming the rebate option should not have received supplies on which the supplier has availed the certain export benefits of any of the notifications specified in the said rule, which reads as under:

“96(10). The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3 Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.”

(ii) Rule 96(10) of the CGST Rules, 2017 was further **amended vide Notification No.39/2018- CT dated September 4, 2018 with retrospective effect from October 23, 2017** and a new sub-rule (10) was inserted which provided that an exporter who is availing the benefit of the notifications specified in (b) or receives supplies from a person who is availing the benefits under clause (a) of Rule 96(10) will not be entitled to claim refund of IGST paid on export of goods w. e. f. 23-10-2017. An extract of the same is provided below:

“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under **notification No. 78/2017-Customs**, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or **notification No. 79/2017-Customs**, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017.”

(iii) Board vide Circular No.59/33/2018-GST dated 04th September, 2018 issued clarification regarding restriction imposed vide rule 96(10) of the CGST Rules, as under:

“5. Scope of rule 96(10) of the CGST Rules:

5.1 Rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax, dated 04.09.2018 provides that registered persons, including importers, who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed, shall not be eligible for refund of integrated tax paid on export of goods or services. For example, an importer (X) who is importing goods under the benefit of Advance Authorization/EPCG, is directly purchasing/importing supplies on which the benefit of reduced/Nil incidence of tax under the specified notifications has been availed. In this case, the restriction under rule 96(10) of the CGST Rules is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), on payment of full tax, then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid. However, in the said example if Y purchases these goods from X after availing the benefit of specified notifications, then Y also will not be eligible to claim refund of integrated tax paid on export of goods or services.

5.2 Overall, it is clarified that the restriction under rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax, dated 04.09.2018, applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of certain notifications, as specified in the said sub-rule, has been availed.”

From the above clarification, it is seen that that the importers who are directly importing supplies on which benefit of reduced tax incidence or no tax incidence under certain notifications specified under rule 96(10) has been availed, shall not be eligible for refund of integrated tax paid on export.

(iv) Further, Rule 96(10) of the CGST Rules, 2017 was again amended, vide Notification No. 53/2018 – Central Tax dated October 9, 2018, with retrospective effect from October 23, 2017 and the **clause (b) to sub-rule (10) has been deleted**. Accordingly, the option to claim rebate of tax paid on export will be available to those exporters who imports the goods on their own account

by availing exemptions under the notifications specified in Rule 96(10). Only those exporters who receive goods from the suppliers who avail the benefit under notifications provided under Rule 96 (10) cannot claim refund of tax paid on export. The extract of the amendment is reproduced herein below:

“2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:-

“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No.79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.”.

11. In view of the above, we hold that the availing exemption under Notification No.79/2017-Cus dated 13.10.2017 in respect of additional duty of Customs under sub-Section (1), (3) and (5) of Section 3, anti-dumping duty under section 9A, but opting to pay IGST on the import of goods under Advance Authorization, would tantamount to availing the benefits of exemption under Notification No.79/2017-Cus dated 13.10.2017, as contemplated under Rule 96(10) of CGST Rules, 2017. Consequently, the applicant is not eligible to claim refund thereof under Rule 96(10) of CGST Rules, 2017, as amended.

12. In the light of the aforesaid circumstances, we rule as under:

R U L I N G

Question 1: Whether availing exemption under Notification No.79/2017-Cus dated 13.10.2017 in respect of additional duty of customs under sub-Section (1), (3) and (5) of Section 3, anti-dumping duty under section 9A, but opting to pay IGST on the import of goods under Advance Authorization, would tantamount to availing the benefits of exemption under Notification No.79/2017-Customs, dated 13.10.2017, as contemplated under Rule 96(10) of CGST Rules, 2017?

Answer: Answered in the Affirmative, as discussed above.

Question 2: If the answer to the above question is negative, then whether the applicant is allowed to export goods on payment of IGST and claim refund thereof under Rule 96(10) of CGST Rules, 2017?

Answer: Answered in the Negative, as discussed above.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.07.2020.