

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by M/s Khaitan Chemicals and Fertilizer, Farhad, Somni, Rajnandgaon GSTIN- 22AAACK2342Q1ZK, on determination of the liability to pay IGST under Reverse Charge Mechanism (RCM) on deemed Ocean Freight.

Read :-Application dated 21-07-2020 from M/s Khaitan Chemicals and Fertilizer, Farhad, Somni, Rajnandgaon (GSTIN- 22AAACK2342Q1ZK).

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/11/2020

Raipur Dated .04.10.2021

M/s Khaitan Chemicals and Fertilizer, Farhad, Somni, Rajnandgaon Chhattisgarh [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling as to payment of IGST under Reverse Charge Mechanism (RCM) on deemed Ocean Freight on import of goods (raw material) on CIF basis. However, IGST has already been paid on total CIF value which includes the value of ocean freight.



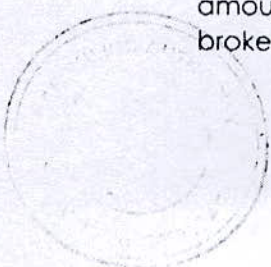

2. Facts of the case:-

2.1 Khaitan Chemicals & Fertilizers Ltd. is mainly engaged in the manufacturing of Single Super Phosphate (Fertilizer), Sulphuric Acid (Chemical). For the manufacture of Single Super Phosphate (SSP), the major raw material required is Rock Phosphate which is imported from various countries like Egypt, Jordan & Morocco and also procured locally within country. The company is registered under the GST laws for payments of GST/IGST besides being paying the customs duty on import of Rock Phosphate.

2.2 Rock phosphate and other materials is imported only on CIF (sum of Cost, Insurance & Freight) basis. In CIF basis purchases, the freight invoice is issued by the foreign shipping line to the foreign exporter. The importer (i.e. Khaitan Chemicals & Fertilizers Ltd.) is concerned only with the purchase of goods and the suppliers of rock phosphate are responsible for transportation of goods upto the custom frontier of India. The company neither has any invoice of ocean freight nor has any idea of payments and the amount of ocean freight by the foreign exporter.

2.3 Reference to various acts for levying IGST on imported goods and determining the value for calculation of IGST:

- Section 5(1) of the IGST Act, 2017 provides for circumstances when IGST would be applicable. It states IGST is charged on all interstate supplies (goods or services or both) except the supply of alcoholic liquor for home consumption. Provided IGST on imported goods is charged:
 - and collected according to the provisions of section 3 of the Customs Tariff Act, 1975 and
 - on such a value as is decided under tariff act at a time when duties of customs are charged on such goods under Customs Act 1962.
- As per Section 3(7) of the Customs Tariff Act, 1975, any article imported into India, would be liable to integrated tax, on the value as determined under Section 3(8).
- As per Section 3(8) of the Customs Tariff Act, 1975, the value of imported article for the purpose of IGST shall be the aggregate of value of imported article under Section 14(1) of the Customs Act and shall include all duties of customs excluding IGST and compensation cess.
- As per Sec. 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods.
- As per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, transaction value shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, **costs of**



transportation to the place of importation, insurance, loading, unloading and handling charges.

Thus, with regards to the above sections of various acts, on importation of goods, IGST shall be levied on the sum of CIF (Cost, Insurance & Freight) value of the goods and all duties of customs.

2.4 The company, at the time of importation, pays Customs Duty on the CIF value of the goods (rock phosphate and other material) imported. The company also pays the 'Integrated Tax' (known as IGST) under the IGST Act, 2017, on the imported material on the CIF Value plus Customs Duty. The said CIF value is the sum of cost, insurance and freight, which implies that this value includes the value of the Ocean Freight.

3 Contentions of the Applicant:- The applicant's contention are as under :-

- 3.1 As per Notification No. 8/2017-Integrated Tax (Rate), IGST shall be levied on the inter-state supply of services of transportation of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.
- 3.2 As per Corrigendum dated 30-06-2017 to the Notification No. 8/2017-Integrated Tax (Rate), where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10 % of the CIF value (sum of cost, insurance and freight) of imported goods.
- 3.3 As per Notification No. 10/2017-Integrated Tax (Rate), in case of services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services. Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory shall be considered as the recipient of services.
- 3.4 With reference to the above notifications, IGST is levied on freight components (Ocean Freight) and payable by the importer (KCFL) under reverse charge mechanism. Furthermore, the value of Ocean Freight is deemed to be 10% of the CIF value as the actual value of freight is not known.
- 3.5 The company therefore pays IGST on the freight component, known as Ocean Freight, under reverse charge mechanism. Since the company neither has any invoice of the ocean freight nor any idea of the same, therefore, the above-mentioned deeming fiction for the value of freight is applied. As per this deeming



fiction, 10% of the CIF value is considered to be the Ocean Freight and hence IGST is again paid (on reverse charge basis) on this 10% value of CIF.

3.6 Thus, the company is paying the IGST twice on the same amount. Firstly, IGST on the CIF Value + Customs Duty and secondly on the Ocean Freight which is 10% of the CIF Value. This is amounting to double taxation on freight portion of imported goods

- Goods imported and IGST levied on CIF Value (which includes freight) + Basic Custom Duty + Social Welfare Cess.
- IGST levied again on the freight component (Ocean Freight) on reverse charge basis.

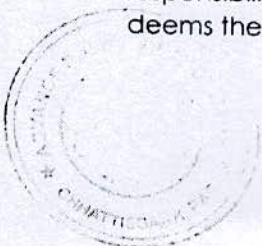
In such circumstances, to levy and collect once again the Integrated Tax under the same Act on the 'supply' (same aspect) amounts to double taxation.

3.7 There have been various cases on the same matter of double taxation of Ocean Freight. One of the notable cases was Mohit Minerals Pvt. Ltd. vs Union of India.

In this case, the company is engaged in importing non-cooking coal from Indonesia, South Africa and U.S.A. and supplying it to various domestic industries including power, steel, etc. The writ-applicant discharges the customs duty on the imported products at the time of each import and such value includes the value of freight on which customs duty is demanded and paid. The writ-applicant is liable to pay integrated tax in terms of provisions of the Integrated Goods and Services Tax Act, 2017 (IGST/Integrated Tax Act) and accordingly the writ-applicant is paying the integrated tax at the time of import itself, which also includes value of Ocean Freight involved in imported coal. The integrated tax (IGST) is levied again on reverse charge basis on the Ocean Freight for which the writ-applicant is already paying the integrated tax at the time of import with the value of imported coal.

3.8 Thus, the writ-applicants challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods. Gujarat High Court in this matter pronounced the judgment that as per section 14 of Customs Act, assessable value of goods includes freight amount which represent the expenditure on transportation of goods. IGST is already paid on freight element by including it in assessable value. Therefore, payment of IGST separately on the ocean freight will amount to double taxation. Thus, IGST cannot be imposed on the same freight amount by treating it as a supply of service since freight also suffers IGST as a part of the assessable value of imported goods. This is necessary to avoid the vice of double taxation.

3.9 The company imports on CIF basis, and therefore is not concerned about the freight and does not know even about the charges for the same, which is the sole responsibility of the supplier of the rock phosphate outside India. Thus, the company deems the freight amount to be 10% of the CIF value.



3.10 Therefore, the company firstly pays IGST on the total of CIF Value and Customs Duty. The CIF value referred here includes the freight component which is paid by the supplier itself. Secondly, the company again pays IGST on the deemed value of freight (10% of CIF Value) on reverse charge basis. Thus, the company is paying IGST on the same amount and same supply two times which implies double-taxation on Ocean Freight.

3.11 As referred above, in Mohit Minerals Pvt. Ltd. Vs Union of India (Gujarat High Court), the applicants have challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the applicants as the importer of the goods. Gujarat High Court in this matter pronounced the judgment that as per section 14 of Customs Act, assessable value of goods includes freight amount which represent the expenditure on transportation of goods. IGST is already paid on freight element by including it in assessable value. Therefore, payment of IGST separately on the ocean freight will amount to double taxation. Thus, IGST cannot be imposed on the same freight amount by treating it as a supply of service since freight also suffers IGST as a part of the assessable value of imported goods. This is necessary to avoid the vice of double taxation.

3.12 Therefore, considering the IGST paid twice on Ocean Freight (once on total CIF value and again on deemed 10% of CIF Value) and also the judgment of Gujarat High Court, we are seeking your clarification in this matter of double-taxation and allow us to not make any payment towards IGST on ocean freight under RCM.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant through virtual mode and accordingly their authorized representative Shri Kapil Binakya, CA appeared online before the authority for hearing on 21/10/2020 and reiterated their contention.

5. The legal position, Analysis and Discussion:-

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, 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 CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

5.1 We find that the applicant is seeking advance ruling on the issues regarding liability to payment of IGST under Reverse Charge Mechanism (RCM) on deemed Ocean Freight on import of goods (raw material) on CIF basis on the ground that IGST has already been paid on total CIF value which includes the value of ocean freight.



5.2 Section 5 of the Integrated Goods and Services Tax Act, 2017 on LEVY AND COLLECTION OF TAX stipulates as under:-

5. Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person: 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 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.

(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

[(4).....]

5.3 Section 7 of the Integrated Goods and Services Tax Act, 2017 stipulates as under:-

7. Inter-State supply. — (1) Subject to the provisions of section 10, supply of goods, 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 goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

5.4 Section 11 of the Integrated Goods and Services Tax Act, 2017 stipulates as under:-

11. Place of supply of goods imported into, or exported from India. — The place of supply of goods,—

(a) imported into India shall be the location of the importer;

(b) exported from India shall be the location outside India.



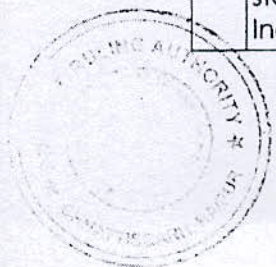
5.5 As per Notification No. 8/2017-Integrated Tax (Rate) dated 28.6.2017, IGST shall be levied on the inter-state supply of services of transportation of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Further as per Corrigendum dated 30.06.2017 to the Notification No. 8/2017-Integrated Tax (Rate), where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10 % of the CIF value (sum of cost, insurance and freight) of imported goods.

5.6 Notification No. 10/2017-Integrated Tax (Rate) dated 28.6.2017 specifies that in case of services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services. Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory shall be considered as the recipient of services.

5.7 Section 5(3) of Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017), supra provides that the Government on the recommendations of the GST Council, by notification, specify categories of supply of goods or services or both on which GST shall be paid on reverse charge basis by the recipient of such goods or services or both. Accordingly, the Government can specify the services on which IGST is required to be paid by recipient under reverse charge.

Entry No. 10 of Notification No. 10/2017-I.T. (Rate), dated 28th June, 2017 which is issued under the said Section 5(3) of IGST Act, 2017 provides as under:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
10	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.



Entry No. 9(ii) of Notification No. 8/2017-I.T. (Rate), dated 28th June, 2017 provides as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)
9(ii)	Heading 9965 (Goods transport services)	Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	5%

5.8 Aforesaid Notification No. 10/2017-I.T. (Rate) further provides that where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India is not available with the person liable for paying IGST under reverse charge, the value of taxable service shall be deemed to be 10% of the CIF value (sum of cost, insurance and freight) of imported goods.

From the combined reading of above provisions it emerges that an importer of goods is liable to pay 5% IGST under reverse charge on services by way of transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India, provided by a person located in non-taxable territory to a person located in non-taxable territory and in case actual value of service (actual value of freight) is not known to importer, the same shall be deemed to be 10% of the CIF value of imported goods.

5.9 Import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-State supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017. The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Thus, any goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST

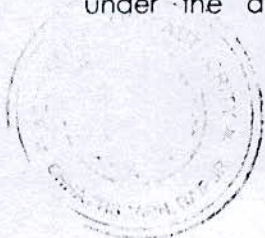


Act, 2017 on a like article on its supply in India. Further, the value of the goods for the purpose of levying Integrated tax shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. In the case of cess being applicable, the value of the imported article for the purpose of levying cess shall be assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on that goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. The integrated tax paid shall not be added to the value for the purpose of calculating cess.

On the other hand, import of services has specifically been defined under IGST Act, 2017 and refers to supply of any service where the supplier is located outside India, the recipient is located in India and the place of supply of service is in India. As per the provisions contained in Section 7(1) (b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as a supply. Thus, in general, import of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply. Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration. Section 13 of the IGST Act, 2017 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. Thus, this section provides the place of supply in relation to international or cross-border supply of services. In the case of transportation of goods, other than by way of mail or courier as is the case in hand, the place of destination of such goods will be the place of supply.

5.10 Under the GST regime, Article 269 A constitutionally mandates that the supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce for levy of integrated tax. So, import of goods or services will be treated as deemed inter-State supplies and would be subject to Integrated tax. Thus as discussed supra for importing of goods, there is no ambiguity as regards the applicable provisions i.e., it is a transaction of 'import of goods' and 'supply of goods', and accordingly the importer shall be liable to pay Basic Customs Duty along with integrated tax valued in accordance with Sec 12 of the Customs Act, 1962 (52 of 1962) read with of the Customs Tariff Act, 1975 (51 of 1975), on the value as determined under the said Act. While IGST on import of services would be leviable under the IGST Act on reverse charge basis, the levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. Accordingly, the concept of "double taxation" propounded by the applicant in their application is thus found to be unsubstantiated, bereft of merit.

In the instant case, the applicant appears to be questioning the veracity and validity of levy of IGST on ocean freight under reverse charge mechanism, as stipulated under the aforesaid Notifications issued by the Central Government, on the



recommendations of the GST council deriving powers as envisaged under section 5, subsection (1) of section 6 and clause (iii) and clause (iv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and under sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017). In this regard, it would not be out of context to mention here that any question relating to constitutional validity of the Notifications issued and matters relating to policy matter do not fall within the ambit and jurisdiction of this authority. We would also like to mention here that Notifications are issued on the basis of the recommendations of the GST Council under the provisions of Article 279A (4) of the Constitution of India inserted vide the Constitution (One Hundred and First) Amendment Act, 2016.

5.10 The applicant has also cited reference to the decision of Hon'ble High Court of Gujarat in the case of Mohit Minerals Pvt. Ltd. vs Union of India [2020] 113 taxman.com 436 Gujarat. In this regard this authority could gather that the said issue has not attained finality in as much as the department has filed SLP against the said order of Hon'ble Gujarat High Court, before Hon'ble Supreme Court.

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

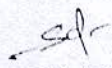
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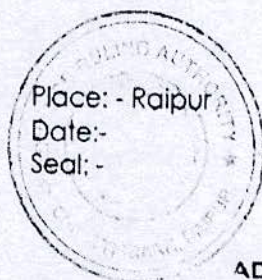
The ruling so sought by the Applicant is accordingly answered as under:

RULING

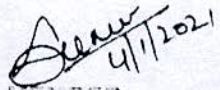
In terms of prevailing provisions of the IGST Act, 2017 and the Rules made there under as discussed above, the applicant in addition to IGST on import of goods levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975 would also be liable to pay IGST on deemed ocean freight under reverse charge mechanism as stipulated under Notification No.10/2017-I.T.(Rate) read with Notification No.8/2017-I.T.(Rate).


Sonal K. Mishra
(Member)

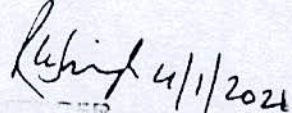

Rajesh Kumar Singh
(Member)



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