MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		**27AAACG1840M1ZL**
Legal Name of Applicant		**M/s. APAR INDUSTRIES LIMITED**
Registered Address/Address provided while obtaining user id		Plot No.18, TTC Industrial Area, Near Rabale Telephone Exchange, Thane-Belapur Road, Rabale, Dist.-Thane Navi Mumbai, Thane 400701
Details of application		GST-ARA, Application No. 37 Dated 09.08.2019
Concerned officer		MUM-VAT-E-604, LTU-001, Mumbai
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Factory/Manufacturing**
B	Description (in brief)	M/s. Apar Industries Ltd., having factories at Rabale (Maharashtra), Silvassa (Union Territory of DNH), Gujarat and Odisha, are the registered manufacturer and supplier of various goods detailed like Transformer Oils, White Oil, Industrial Lubricating Oils and Specialities Oils, Falling under the Customs /GST Tariff No.2710, Aluminum Conductors falling under Chapter Heading No.7614 of the Customs/GST Tariff Act and Various Grades of Cables, including Power/Electric Cables, House wire, Marine / Pressure Tight Cables/ Non Pressure Tight Cables; etc. falling under Chapter Heading No.8544 of the Customs/ Tariff Act.
	Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both
	Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. APAR INDUSTRIES LIMITED,** the applicant, seeking an advance ruling in respect of the following questions.

1. ***When goods i.e. Marine / Pressure Tight Cables/ Non Pressure Tight Cables, falling under Chapter 8544 are manufactured & designed especially for use for Defence Ministry in their Warship as Parts of Warship, what will be the Determination of Tax Liability on such supply?***

2. ***Whether GST @5% is applicable in terms Sr. No: 252 of Schedule-1 of the Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017?***

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant are as under:-

2.1 Apar Industries Ltd., the applicant, falling within the jurisdiction of Maharashtra State is a registered manufacturer and supplier of various types & grades of cables falling under Chapter Heading No. 8544 of Customs /GST Tariff.

2.2 Notification No. 01/2017- I.T. (Rate) dated 28.06.2017, classifies and groups goods into Six Schedules for the purpose of uniformity in levying and affixing rate of GST category-wise/schedule wise. All Goods of Schedule-I are categorized as 5% GST rated goods, wherein Sr. No. 250 and 252 refers to the following supply/goods –

S. No. 250	The goods of Tariff Heading 8906, with the description as "Other Vessels, including warships and lifeboats other than rowing boats".	Will attract GST @5%
S. No. 252	The goods of any Tariff Heading/Chapter, if they are the "Parts of goods of headings 8901.8902, 8904, 8905, 8906, 8907".	GST @5% will applicable

2.3 Applicant has procured orders, for supply of Marine/Pressure Tight Cables/Non Pressure Tight Cables, from the 'Defence Machinery Design Establishment (DMDE), Department of Defence Research & Development (DDRD), Ministry of Defence (MOD), Government of India (GOI), for their use in Warships as "Parts of goods of heading 8906 OR as Parts

of Warship". While placing the orders, MOD, have stated that GST @ 5% will be applicable on the said supply in terms of Sr. No. 252, of Schedule-I of above stated Notification, as these goods (Cables) are intended to be used in Warship as parts of warship.

2.4 Marine / Pressure Tight Cables / Non Pressure Tight Cables, to be supplied by applicant are a very essential and integral part of warship, without which warship cannot function and cannot be completed and at the same time said goods supplied and used in the warship are capable of being separated as such for the purpose of repairs and replacement and hence as End User Certificate has been issued by the Rear Admiral of Indian Navy / Defence Ministry, certifying therein the intended use of said goods as "Parts of Warship" vide their File No. HLC/85/PT-10 Cables (32 Types)/S4* dated 10.06.2019.

2.5 The goods supplied to the MOD can be classified under Chapter 8544 in the present case, but when the same is used as parts of goods of Chapter 8906 (warship), benefit cannot be denied since the MOD has also issued an "End User Certificate' mentioned above.

2.6 In post GST Regime, benefit of concessional rate of GST is provided for intended use of any goods falling within any Chapter, once it is certified that the same is used in warship as parts of warship. Hence, concessional rate of GST @ 5% is applicable to Marine or Pressure Tight Cables when supplied for use in warship in terms of Sr. No. 252 of Schedule-I of Notification No.1/2017-I.T.(Rate) dated 28.06.2017.

2.7 Advance Ruling Order No. CT/5496/18-C3, dated 29.05.2018 passed by Authority of Advance Ruling – Kerala, in case of M/s. Saraswathi Metal Industries, Alappuzha, supports the contention of Applicant that concessional rate of GST is applicable in their case.

2.8 Applicant made further submissions on 13.11.2019 as under:-

2.8.1 Issue involved is regarding a Purchase Order (PO) dated 26th March 2019 and other similar orders received from the DMDE, DDRD, under the MOD, GOI, for supply of Marine - *Pressure tight and non-pressure tight cables falling under HS Code 8544 f*or use as 'Parts of Warship', claiming concessional rate of GST at 5% in terms of Sr. No. 252 of the Notification No.1/2017-I.T. (Rate) dated 28.06.2017.

2.8.2 Applicant has a Head Office/Corporate Office in Mumbai, registered under CGST/MGST Act and in whose name /address all the sales or purchase orders are negotiated/fixed/received. Applicant has manufacturing units & Sales Depots in many / different States which are also registered in the respective states for the purpose of effecting supplies therefrom. Since the entire business decisions of the Applicant including the Purchase Order is "accepted" in the "State of Maharashtra", subject Application is submitted at Mumbai.

2.8.3 Subject goods, will be supplied ex VAPI, (Gujarat State) and the Tax Invoice shall be raised, from the State of Gujarat since an Invoice has to accompany the goods.

2.8.4 Subject issue involves interpretation of Entry No. 252 of Notification dated 28-06-2017, which does not impose any condition precedent to avail concessional rate of GST. It merely provides that the Goods supplied can be of any Chapter, but should be used as 'Parts of goods of Heading 8906".

2.8.5 The subject goods are essential parts and components of a ship/warship without which the warship would not be complete and would not exist. These are very integral for the functioning of the ship and can also be separated from the ship for repair/replacement.

2.9 Further submissions are made by the applicant as follows:

2.9.1 Their Accounting System is centralized and handled/ operated from Mumbai. They have Manufacturing Locations and Warehouses/Depots in various States in India.

2.9.2 Applicant has already supplied the specified goods on "inter-state basis" from their Factory at UMERGAON, VAPI (Gujarat) under "Tax Invoice" issued from the factory at VAPI.

2.9.3 The goods in question were specially designed, manufactured for fulfillment of the Defence Department requirement and are supplied from applicant's factory at Umergaon, (Vapi and Gujarat) and as such the "Tax Invoice", which must accompany the goods, moved on inter-state basis to Delhi, was issued from the Gujarat State.

2.9.4 Applicant presumes that the "lack of jurisdiction" of this authority to hear the subject matter is based solely on the ground that the "tax invoice" has been issued from VAPI-factory, and as such the State of Gujarat is the State in which the Jurisdiction gets shifted. This would mean that the place/State from where the manufactured goods are removed or moved would alone have jurisdiction" to entertain an Application for Advance Ruling.

2.9.5 Jurisdiction of the functionaries under the Act cannot be linked to the place of production of goods or services or movement of goods. GST is a destination-based or consumption-based tax. Hence, the place of consumption will decide the State that will collect tax.

2.9.6 Even if it is granted that the State of Gujarat is the appropriate State, the further question may arise is why not "Delhi State", as the delivery of goods is being made on Inter-state basis to the registered person under the Delhi GST Act? Or why not the State where the Warships would be built using the cables supplied by the Applicant? Thus the prima facie view entertained by this Authority regarding jurisdiction to hear the case does not appear to be just and correct as it would render the specific provisions of the MGST Act redundant.

2.9.7 Applicant has submitted that, the fact that it has fulfilled the twin basic conditions: (a) registration GSTIN obtained on the GST portal, (b) deposited fee amount in Electronic

Cash Ledger, are weightier, sound grounds and reasons why the Application submitted by the Applicant, needs to be "admitted" for hearing on merits.

2.9.8 Applicant has submitted that this Authority has the competence, jurisdiction, powers and Authority to admit the application and give verdict and has further stated that: The Statutory functionary has to act as per the Statute; The AAR is a "tribunal" with trappings of the Court; The principles of Civil procedure apply and the AAR has no inherent jurisdiction, or discretion.

2.9.9 A plain and simple reading of the relevant provisions of the Maharashtra Goods and Services Tax Act, 2017, (MGST, Act) makes it clear that the GST law is complete code in itself for the entire substantive & procedural law governing the Advance Ruling mechanism including constitution of the AAR, appointment of persons who will preside over and give verdict, the eligibility of the Applicant who desires to have Advance Ruling and all relevant procedures including the appeal provisions.

2.9.10 Applicant, citing a few case laws has submitted that, since the AAR is a 'tribunal established under Section 96 of the MGST Act, ***it being the creature of the Statute, it has to function within the four corners of law,*** and cannot travel beyond the boundaries earmarked for exercise of its powers, authority, duties and responsibilities as also the procedure prescribed by the Statute. The AAR cannot either add any new condition, or any procedural requirement beyond those specified in sections 95, 96, 97 or 98 of the MGST Act.

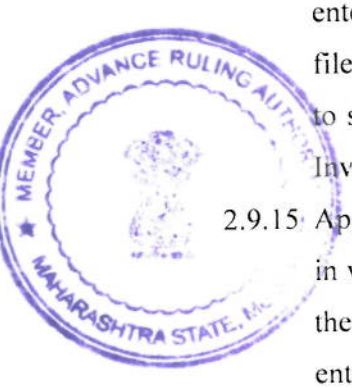
2.9.11 Applicant has further submitted that, as per the provisions of Section 98 (2) of the MGST Act, **the only prescription for non-admissibility of the Application is that the question or matter raised before the Authority for Advance Ruling is "either decided or pending in 'any proceedings' in the case of the Applicant**. Hence, the ground for non-maintainability of the subject application i.e. "tax invoice" is/will be issued from a place other than the State of Maharashtra is not acceptable. Applicant states that the AAR does not have any power or authority to add to or modify the proviso or enlarge the scope of the Advance Ruling provisions in any manner. The provisions are a legislative edict and either the Applicant falls within or is outside the Proviso.

2.9.12 The Advance Ruling Authority is a 'tribunal' having trappings of a Court of law. Broadly, the expression used in various judgments rendered by various Courts is that an Authority would be a Tribunal if it has the "trappings of a Court". In the light of the various legal positions, it is clear that this AAR is a Tribunal with the trappings of a Civil Court, though

not a court of law. Therefore, it has a duty to follow the principles analogous to those set out in the Civil Procedure Code, 1908.

2.9.13 The concept of "jurisdiction" in civil matters is well defined in view of the civil procedure code and long standing practice. "Jurisdiction" generally means the power or authority of the court of law or tribunal to hear and determine a cause or a matter for example, the AAR under the MGST Act cannot decide on the place of supply and as such cannot decide whether the service is an 'export service'. In such a situation, the AAR would lack basic "jurisdiction", as it cannot give relief asked for.

2.9.14 Citing the provisions of Section 20 of the Civil Procedure Code, 1908, applicant has submitted that the Explanation to Section 20 states that "A co*rporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place*'. Applicant has also cited the decision of the Honourable Supreme Court of India in Patel Roadways Limited, Bombay vs. Prasad Trading Company on 6 August, 1991, 1992 AIR 1514 and submitted that in the present case, the major part of the cause of action has arisen in Maharashtra State and therefore as per the MGST Act, Maharashtra State AAR has to entertain an Application for Advance Ruling from the person, who is registered and who files application in Form and manner prescribed and pays on line fees and it is not correct to say that the State of Gujarat alone has "jurisdiction" based on the raising of the "Tax Invoice"

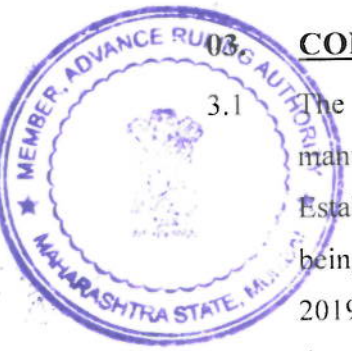


2.9.15 Applicant has also submitted that if this authority is of the view that it has no jurisdiction, in view of the provisions of Order VII Rule 10 CPC, the application is to be returned and the applicant can present it before the authority having competent jurisdiction and is entitled to exclude the period during which the subject application was pending before this authority, in view of the provisions of Section 14 of the Limitation Act, and adjustment of fee paid should also be allowed.

2.9.16 Applicant has finally submitted that while this authority constituted under Section 96 of the MGST Act, is an Authority vested with powers and jurisdiction to decide matters brought before it in terms of the Statute, and its orders have finality, subject to appeal, and in exercising these powers has trappings of a court of law, yet it being NOT a court of law, does not have "any inherent powers" like a Court. Section 196 of the MGST Act clothes this authority with powers to "regulate" its own procedures, but that is "subject to preceding statutory prescriptions". Hence this authority cannot add any condition or burden nor can it ignore any substantive provisions; and if that be the true position in law,

this Authority cannot decline to "admit" the Application on the assumed ground or reason that the Tax Invoice is not generated in the State of Maharashtra and as such it lacks basic, inherent "jurisdiction". A deviation from the statutory provisions violates rule of law, and is liable to quashed as bad in law.

2.9.17 Thus the applicant has concluded that; the subject Application for Advance Ruling is in conformity with the statutory requirements and hence it be "admitted", and if found non-maintainable then the application may have to be transferred to the AAR having jurisdiction and competence to give verdict and in that event the fees paid may also be "appropriated" to such new Authority; this authority has no inherent jurisdiction, being an Authority constituted under the MGST Act, it has to follow the provisions of Chapter XVII therein, without any addition or omission of any statutory prescription; the view of this authority with respect to non-maintainability of the application is untenable and if not admitted and if this authority decides to "return" the Application with a direction to file it in State of Gujarat or any other State, then appropriate Orders may be passed for "granting refund of fees", in conformity with the law laid down by the Honourable Supreme Court order dated 25.10.2019, in the case of Dr. (Col.) Subhash Chandra Taiwar Vs T. Choithram.



03. CONTENTION OF THE JURISDICTIONAL OFFICER:

3.1 The jurisdictional officer has submitted that the company has received the order for manufacture, testing and supply of subject goods from the 'Defence Machinery Design Establishment (DMDE). The "End User Certificate" from DMDE certifies that the goods being procured vide Purchase order No.: HLC/85/PT-10(32 Types)/S4*/225 Dt. 26 Mar 2019 are in line with stipulation mentioned in notification under GST. There is no other document available on record which can prove that the goods mentioned in Purchase Order are to be used as a parts of warship. In the subject case, if the applicant produces any document which can show that the goods i.e. Pressure Tight (PT) Cables are being used as parts of warships then the GST rate would be 5% otherwise it would be 18%.

04. HEARING

Preliminary hearing in the matter was held on 12.12.2019. Shri D.P. Bhave (Advocate), and Shri Inder Thakur (G.M.), Indirect Taxes appeared, and requested for admission of their application. Jurisdictional Officer Shri. Sanjay R. Chaudhar, Deputy Commissioner, E-604, LTU-1, Mumbai also appeared.

The contention was heard from both sides, but considering the facts of the transaction on which advance ruling is sought, prima facie the application was found non maintainable and out of jurisdiction, so the matter was again fixed for hearing on the issue of maintainability on 02.01.2020. Shri D.P. Bhave (Advocate) and Shri Inder Thakur (General Manager), Authorized Representative, appeared, made oral and written submissions. Jurisdictional Officer Shri. Sanjay R. Chaudhar, Deputy Commissioner, E-604, LTU-1, Mumbai also appeared and made written and oral submissions. We heard both the sides.

05. DISCUSSIONS AND FINDINGS

5.1 We have gone through the facts of the case, written contentions made by both, the applicant and jurisdictional officer at the time of preliminary hearing.

5.2 Applicant is registered under the GST ACT in Maharashtra and a few other states of India. Head office (HO) of the applicant is located in Maharashtra State.

5.3. Applicant has submitted that it has received a purchase order from the Defence Machinery Design Establishment (DMDE), under the Ministry of Defence (MOD), Government of India (GOI), Secunderabad for supply of subject goods to be used as 'Parts of Warship' for which an end user certificate has been issued by the appropriate Defense Authority. Hence applicant has approached this authority as to whether they are entitled to concessional rate of GST on the said goods.

5.4 Even though applicant has received the Purchase Order (PC) in the name and address of their Maharashtra office, the subject products are being/will be manufactured in their factory located in the State of Gujarat, a fact known to the MOD because the End user certificate for GST purposes has been issued on the applicant's Gujarat factory which is separately registered under Gujarat GST Act.

5.5 Subject goods will be delivered to the MOD, GOI, Telangana under Tax invoice issued from their Gujarat office, and said transaction would also be accounted for, in Gujarat. The Head Office is only receiving the Purchase Orders. All the supplying activities will be carried out from their Gujarat factory and not Head Office.

5.6 Considering the facts of the subject case, for the transaction in question, applicant would be filing the relevant GSTR -1 returns from Gujarat State. The situs of supply of goods is originating from Gujarat and all other legal provisions of GST Acts are also to be fulfilled in Gujarat. The Gujarat GST authorities have the jurisdiction to collect GST on this transaction. Applicant is not carrying out any supply from the State of Maharashtra. Hence,

the jurisdiction of this transaction is covered under Gujarat and Maharashtra has no scope to levy GST thereon.

5.7 On the issue of admissibility or maintainability of this application, applicant has made exhaustive written and oral submissions. Applicant has submitted that this authority has the power and jurisdiction to rule on advance ruling applications filed by any registered person under GST Act and that its Maharashtra GST registered office can make this application even if the 'Tax Invoice' is raised from Gujarat. Applicant has stated that if their application is to be rejected on the grounds of jurisdiction then, the application should be transferred to the concerned state authority or the fees paid along with the application should be refunded to them.

5.8. We shall now examine the provisions of laws laid down by the CGST Act for the purposes of advance rulings. Chapter XVII of the CGST Act comprising of Sections 95 to 98 and Sections 103 to 106 of CGST ACT are relevant provisions for advance ruling purposes. These sections are already cited by the applicant in the subject application.

5.8.1 As per Section 96, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act, shall be deemed to be the Authority for advance ruling **in respect of that State only**. In pursuance of this provision, Government of Maharashtra issued a notification and constituted an Authority to be known as the "Maharashtra Authority for Advance Ruling". The said Government Notification No MGST-1017/CR-193/Taxation-1 dated 24.10.2017, states that "For this purposes, in exercise of the powers conferred by Section 96 of MGST ACT 2017, (Mah. XLIII, of 2017) the Government of Maharashtra constitutes the Maharashtra Authority for Advance Ruling **for the state of Maharashtra** consisting of two members, one from state and another from central jurisdiction. It is therefore very clear that this authority has been constituted by an act of the Government only for applicants from Maharashtra.

5.8.2 As per Section 95, ***this authority shall decide on matters or on questions specified in sub-section (2) of section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant*** and "Authority" means the Authority for Advance Ruling, constituted under Section 96 Thus Section 95 allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if he applicant is in Maharashtra and the supply of goods or services or both being undertaken or proposed to be undertaken by it is from Maharashtra. The supply of goods in the subject case are being undertaken or

proposed to be undertaken by the applicant's factory in Gujarat which is separately registered in that particular State under the GST Act and is a distinct person as per the provisions of the GST Act. Thus, the supply undertaken by the Gujarat factory cannot be attributed to the applicant's registered premises situated in the Maharashtra State. Hence its jurisdiction will be governed by the provisions under Gujarat State GST Act.

5.8.3 As per Section 97, an applicant, desirous of obtaining an advance ruling under this Chapter ***may make an application in such form and manner and accompanied by such fee as may be prescribed***, stating the question/s on which the advance ruling is sought and the question/s shall be in respect of any of the specific categories mentioned under clauses (a) to (g) of the said section. Section 98 of the CGST Act is related to procedure to be followed by the Advance Ruling Authority, on receipt of an application and after giving an opportunity to the applicant, the Advance Ruling Authority may either admit or reject the application. After admission, an order is required to be passed and copies of the same is to be provided to the applicant. As per Section 103 the advance ruling pronounced by the Authority under this Chapter shall be binding only on the applicant who had sought the ruling, and on the concerned officer or the jurisdictional officer in respect of the applicant.

5.8.4 From the above-mentioned provisions, it is seen that this authority is constituted by the Government of the State of Maharashtra to decide on matters or questions specified in sub-section (2) of section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant registered in Maharashtra. Every other state in this country has the power to constitute such type of authority to provide the rulings pertaining to the respective states under the GST Act. Thus, we find that there are jurisdictional restrictions on the powers of this authority. Further, rulings given by this authority is binding to the applicant (registered in Maharashtra and undertaking or proposing to undertake supplies from Maharashtra) or on the concerned officer or the jurisdictional officer in respect of the applicant. However, in the subject case the impugned supply is/ will be happening from Gujarat for which the concerned/jurisdictional officer in Gujarat will assess this transaction. All formalities pertaining to GST will be done from Gujarat only.

5.8.5 Considering the provisions of the Chapter XVII of the GST Act, this authority can only pass rulings on supplies being undertaken or proposed to be undertaken from Maharashtra State only. Therefore, this authority has no jurisdiction to entertain the subject application and to interfere in such activity of 'supply of goods', being carried out from another state.

5.9 Applicant has also cited an Order passed by the Authority of Advance Ruling – Kerala, in case of M/s. Saraswathi Metal Industries, Alappuzha in support.

5.9.1 In this connection we find that M/s. Saraswathi Metal Industries, which has undertaken the supply, is situated in Alappuzha, Kerala State and the said order has been passed by the Kerala State Advance Ruling Authority. In the subject case, the application is made in Maharashtra in respect of supply undertaken from Gujarat, by a Gujarat registered unit.

5.10 The applicant has contended that the statute does not give any discretionary powers or authority to refuse to give ruling. The GST Act very clearly mandates that this authority has to give a ruling to any applicant, registered in Maharashtra and undertaking or proposing to undertake supply of goods/ services from the state. In this case there is no supply being effected or proposed to be effected from Maharashtra and therefore the applicant has no locus standi to make an application at all. It is not the case that this authority is refusing to give a ruling to a person who is entitled to make an advance ruling application.

5.11 Applicant has submitted that jurisdiction of the functionaries under the Act cannot be linked to the place of production of goods or services or movement of goods since GST is a Destination based tax (consumption tax). Applicant has also argued that if State of Gujarat is the appropriate State, then why not "Delhi State", as the delivery of goods is being made on Inter-state basis to the registered person under the Delhi GST Act Or why not the State where the Warships would be built using the cables supplied by the Applicant.

5.11.1 Under GST regime, tax is required to be paid by the person making the taxable supply. The levy of tax under the GST Act is not linked to the place of production of goods or services or movement of goods, rather it is on the supplier of goods or services or both and the taxable supply is being made by the distinct Gujarat entity.

5.12 The Applicant's contention that they have obtained GSTIN on the GST portal and deposited fee amount in Electronic Cash Ledger, and hence their application should be entertained is incorrect, in view of Section 95 of the GST Act, which states that, applicant must be undertaking or proposing to undertake the supply, in respect of which questions are asked.

5.13 We do not agree with the applicant's statement that the AAR has no inherent jurisdiction. This authority is the constituted under Maharashtra Goods and Services Tax Act and the Section 1(2) provides the jurisdiction to the whole of Maharashtra State. Every State in this country has formed Advance Ruling Authorities in their respective states. This clearly marks out jurisdiction for authorities in all States. It is not open for the AAR in any State to overstep their jurisdiction and pass rulings on applications made by persons who are not undertaking or proposing to undertake the supply in respect of which the queries are made.

5.14 Applicant has contended that the AAR, being the creature of a Statute, has to function within the four corners of law, and cannot travel beyond the boundaries earmarked for

exercise of its powers, authority, duties and responsibilities as also the procedure prescribed by the Statute. Thus, on the one hand the applicant is stating that GST law is a complete code in itself for the entire substantive & procedural law governing the Advance Ruling mechanism and on the other hand the applicant wants this authority to admit the application, ignoring the provisions of Section 95 of the GST Act. Not admitting the application because the applicant is not satisfying the provisions of Section 95 of the GST Act, does not mean that this authority is adding **new conditions or** procedural requirement beyond those specified in the provisions of the MGST Act.

5.15 Applicant is also of the opinion that this Authority shall not admit the application only where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. While it is a fact that in such a case an advance ruling application may not be entertained, it is also provided by the law that the application has to be made in a particular State, by the person who is undertaking or proposing to undertake supply of goods or services or both in that particular State only.

5.16 Applicant feels that the ground for non-maintainability of the subject application apparently is that "tax invoice" is/ will be issued from a place other than the State of Maharashtra and has reproduced Section 20 of the Civil Procedure Code (CPC) and made submissions stating that this authority has the jurisdiction to pass a ruling in the subject case since the major part of the cause of action, in the subject case, has arisen in Maharashtra State.

5.16.1 In this context we find that the taxability, in the subject case arises in Gujarat since the supply is taking place from Gujarat, the E-way Bill for transportation will be issued from Gujarat and the tax assessment and audit will also be in Gujarat. Thus, the correct classification of the product and the rate of GST thereon will be decided by the Gujarat Tax Authorities.

5.16.2 In view of the above we find that the subject application is not maintainable due to the non-fulfillment of the provisions of Section 95 of the CGST Act in as much as it is the Gujarat factory, which is undertaking the supply of goods and not the Maharashtra factory.

5.17 Finally, the applicant has submitted that this authority should follow the principles analogous to the provisions of the CPC, 1908 and therefore, if a conclusion is reached that the Application is "not maintainable", in such a case the application should be transferred to the AAR having jurisdiction and competence to give verdict and in that event the fees paid may also be "appropriated" to such new Authority. In the event this AAR decides to "return" the Application with a direction to file it in State of Gujarat or any other State, then appropriate Orders may be passed for "granting refund of fees".

5.17.1 We do not agree with the applicant's contention regarding transfer the application in case of non-maintainability. We find that GST Act is a Special Act and CPC is a General Act. For a general act to be made applicable in case of a special act, there should be a provision for the same in the special act. We find that no such provisions have been made in GST Act for making the provisions of CPC applicable in the case of GST. Further, the legal maxim Generalia Specialibus Non Derogant" i.e. General things do not derogate from special things reinforces that Special Law always prevails over general law. In this regard we rely upon the judgements of Hon'ble Supreme Court in the case of Anvar P.V. Versus P.K. Basheer as reported in [2017 (352) E.L.T. 416 (S.C.) and Pankajakshi Versus Chandrika as reported in [2017 (345) E.L.T., 438 (S.C.).

5.17.2 We further find that Hon'ble Madras High Court, in the case of India Pistons Limited Versus Assistant Collector of Central Excise, Madras and Others as reported in [1987 (27) E.L.T. 651 (Mad.)] has held that Tribunal has no power to transfer a case. Similarly, the Hon'ble Gujarat High Court in the case of Commissioner of Customs (Preventive) Versus Palvi Power tech Sales Pvt. Ltd. as reported in [2014 (299) E.L.T. 180 (Guj.)] has also held that the Tribunal has no power of transfer, the appeal cannot be transferred.

5.18 This authority is supposed to function within the parameters of the GST Act and Rules and we find that there are no specific provisions under the GST Act, to transfer such application proceeding to the concerned State and there are no provisions for refund of application fees paid along with application. Further, we also draw from the case laws cited in para 5.19.1 above, that this authority has no power to transfer the subject application. As per the provisions of law and principal of natural justice, this application has been entertained and reasonable opportunity of being heard has also been given to the applicant. We have heard the views of applicant but found the same not acceptable. Applicant may file such application before the concerned jurisdictional advance ruling authority.

5.19 In view of above, this authority has no jurisdiction to pass ruling on such matters pertaining to supply of goods or services or both which are being undertaken outside Maharashtra State by a different and distinct entity. We find no reason to entertain this application. Hence, without going into the merits of the case, we find that the present application of the applicant seeking ruling on questions stated hereinabove is not maintainable and liable for rejection.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 37/2019-20/B- 42 **Mumbai, dt.** 18/03/2020

For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is not maintainable and rejected under the provisions of the CGST Act, 2017.

PLACE - Mumbai

DATE -

MEMBER, ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

sd/-
A.A.CHAHURE
(MEMBER)

sd/-
P.VINITHA SEKHAR
(MEMBER)

Copy to:-

1. The applicant.
2. The concerned Central / State officer.
3. The Commissioner of State Tax, Maharashtra State, Mumbai.
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai.
5. Joint Commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.