

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) Mr. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Mr. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAACK4896K1ZZ
Legal Name of Applicant	M/s. Portescap India Private Limited
Registered Address/Address provided while obtaining user id	Unit no. 2, SDF-1, SEEPZ-SEZ, Andheri East, Mumbai, Mumbai Suburban, Maharashtra, 400096
Details of application	GST-ARA, Application No. 93 Dated 17.01.2020
Concerned officer	Division – X, Mumbai East Commissionerate.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Factory/Manufacturing, SEZ
B Description (in brief)	Applicant is engaged in the activity of manufacturing of customized motors in India. Applicant is a SEZ Unit engaged in exports of the manufactured goods.
Issue/s on which advance ruling required	<ul style="list-style-type: none">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.

NO. GST-ARA- 93/2019-20/B-

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Mumbai, dt.

10/12/2019

PROCEEDINGS

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

An application for Advance Ruling was 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. Portescap India Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25th January 2018?
2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25th January 2018?
3. If, answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?

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 of the applicant are as follows:-

- 2.1 *M/s Portescap India Pvt. Ltd., the Applicant, a SEZ Unit, situated in Maharashtra, is engaged in the manufacture of customized motors in India and exports the said goods.*
- 2.2 *Applicant procures Rental Services from Seepz, SEZ Authority, Mumbai-400096 which is a Local authority having GSTIN 27AAALS4995G.*
- 2.3 *Notification No. 18/2017 – I.T. (Rate) dated 05.07.2017 exempts services imported by a unit or a developer in the Special Economic Zone (SEZ) for authorized operations, from the whole of the Integrated Tax leviable thereon under Section 5 of the IGST Act, 2017.*
- 2.4 *The issue in the present case is whether tax is payable, by the applicant, under reverse charge mechanism on procurement of domestic services like renting of immovable property services from SEEPZ SEZ Authority in accordance with Notification No. 13/2017 – C.T. (Rate) & 03/2018- C.T. (Rate) dated 25.01.2018.*
- 2.5 *Section 7 of SEZ Act, 2005 provides for exemption to all goods or services procured from a DTA (Domestic Tariff Area) or foreign suppliers specified in first schedule. According to Section 51 of the SEZ Act 2005, the provisions of SEZ Act would have overriding effect on provisions of any other act including taxation laws.*
- 2.6 *Section 26 of SEZ Act, 2005 deals with exemption from tax on services provided to a developer or unit to carry out authorized operations in a SEZ. The grant of exemption is subject to the terms and conditions prescribed by the Central Government in terms of sub-section (2) of Section 26. Rule 22 of these Rules stipulates the terms and conditions for availing exemptions by a developer and entrepreneur in respect of authorized operations.*
- 2.7 *As per Notification No. 12/2017 – C.T. (Rate) dated 28.06.2017, Central Government has exempted Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees subject to the proviso.*
- 2.8 *Hence, there is a need to determine whether a SEZ unit is required to comply with the provisions of reverse charge mechanism as a service recipient for local/domestic services procured by the unit.*
- 2.9 *Notification No. 13/2017- C.T. (Rate) dated 28-06-2017 as amended by Notification No. 03/2018- C.T. (Rate) dated 25.06.2018, notifies categories of services on which GST will be payable under reverse charge mechanism. Relevant extract is reproduced below:*



Sr.No	Category of supply of Services	Supplier of Service	Recipient of Service
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods Tax Act, 2017.

2.10 From a perusal of the aforementioned notification and the relevant entry, it is appears that any registered person is liable to pay tax under reverse charge basis on procurement of services of renting of immovable property from Central Government, State Government, Union territory or local authority.

2.11 Applicant has reproduced Section 16 of the IGST Act 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.

2.12 Applicant has also referred to FAQ's issued by the CBIC clarifying the below:

6. When a SEZ unit or SEZ developer procures any goods or services from an unregistered supplier, whether the SEZ unit or SEZ developer needs to pay IGST under reverse charge or these will be zero rated supplies?

Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registered under GST, Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration."

2.13 Based on a conjoint reading of the aforementioned points, it is evident that a supply to SEZ will be considered as an inter-state supply and as long as the same supply is used for authorized operations of the SEZ, the same will be zero rated.

2.14 The Default List of Services approved by the Department of Commerce (F. No. D.12/19/2013-SEZ dated 02.01.2018 for authorized operations specifically includes Renting of Immovable Property within its ambit. Therefore, Applicant submits that there can be no liability under the aforementioned notification on the SEZ unit, since the service received by the SEZ would be considered as a zero-rated service.

2.15 Further, Notification No. 18/2017- I.T. (Rate) dated 05.07.2017 exempts services imported by a unit or a developer in a SEZ for authorized operations, from the whole of the integrated tax leviable thereon under Section 5 of the IGST Act, 2017.

- 2.16 Applicant submits that aforementioned notification is applicable not only for services procured from overseas service providers but from services procured within India as well, since the transaction with an SEZ is considered an inter-state supply and aforementioned notification exempts an SEZ unit from IGST on import of service. Therefore, Applicant is not liable to pay GST on reverse charge in the subject case.
- 2.17 Applicant is relying on the judgment of the Hon'ble Telangana and Andhra Pradesh High Court in GMR Aerospace Engineering Ltd. & another V/s U.O.I. & Ors (2019 (8) TMI 748) which states that so long as services are used for authorized operations of a SEZ unit, the same should be exempted from the levy of tax.
- 2.18 Hence, Applicant is not required to comply with the requirements of Notification No. 13/2017 dated 28.06.2017 read with Notification No. 03/2018 – C.T. (Rate) dated 25.01.2018 for any or all services mentioned therein.
- 2.19 Preliminary hearing, for admission of the application, in the matter was held on 11.02.2020. Shri Jai Lokwani and Shri Nitin Khot both, Authorized Representatives, appeared and requested for admission of the application. Jurisdictional Officer was also present. However the case was adjourned for submission of documents with respect to the subject Rent Agreement. Preliminary hearing was held again on 03.03.2020. Shri Jai Lokwani, Authorized Representative appeared, made oral and written submissions. Jurisdictional Officer was also present.
- 2.20 Based on the submissions made and hearings conducted, the application made by the applicant was rejected as being non-maintainable as per Section 95 of the CGST Act, 2017 because the applicant had raised questions as a recipient of services.
- 2.21 Against the Order No. GST/ARA/93/2019-20/B-31, Mumbai, dated 12.03.2020 passed by this authority, the applicant preferred an appeal with the Appellate Authority for Advance Ruling, Maharashtra State. The Appellate Authority for Advance Ruling, Maharashtra State, vide their Order has directed this authority to decide the application on merits, while setting aside the earlier order passed by this authority. As per the directions of the Appellate Authority for Advance Ruling, Maharashtra State, the applicant was issued a fresh hearing in the matter.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER

The submissions dated 01.02.2021 of the jurisdictional officer are as under:-

- 3.1 As per Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2018- C.T. (Rate) dated 25.01.2018, Central Government notifies the categories of services on which tax will be payable under reverse charge mechanism under CGST Act. Renting of Immovable Property is one such service on which GST is payable under reverse charge mechanism when such Services are supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Goods and Services Tax Act, 2017.

- 3.2 Similarly Notification No. 10/2017- I.T. (Rate) dated 28.06.2017- amended by Notification No. 3/2018- I.T. (Rate)-dated 25.01.2018, also notifies the categories of services on which tax will be payable under reverse charge mechanism under IGST Act. Under the said Notification too, Renting of Immovable Property is a service on which GST is payable under reverse charge mechanism when such Services are supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Goods and Services Tax Act, 2017.
- 3.3 The instant case satisfies all the conditions as specified via above notifications, hence as per section 9(3) of CGST Act, 2017 (or section 5(3) of IGST Act, 2017 as the case may be), the applicant is liable to pay tax under Reverse Charge Mechanism.
- 3.4 FAQs dated 15-12-2018 issued by Central Board of Indirect Taxes and Customs clearly state that the SEZ unit is liable to GST under reverse charge mechanism.
- "Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?
- Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case."
- 3.5 Applicant has stated that Notification No. 18/2017- I.T.(R) will prevail over Notification No. 13/2017 dt 28.06.2017 read with Notification No. 03/2018-C.T. (R) dt 25.01.2018.
- 3.6 A combined reading of sections 2 (11) and 2 (56) of the IGST Act, 2017, makes it clear that, when recipient and supplier both are situated in SEZ, India, there is no question of import of services Hence, Notification No. 18/2017 is not applicable in this case.
- 3.7 Applicant submitted that "reverse charge" notification is a general notification and will have to yield to the specific provision made in Sec 16 of IGST Act." In this regard, again it is to be noted that Notification No. 13/2017 dated 28.06.2017 as amended or Notification No. 10/2017- I.T. (Rate) dated 28.06.2017, as amended specifically define the conditions, detailing each and every service specifically and further putting on conditions on recipient and suppliers specifically. In fact, it specifically covers "Renting of Immovable property", hence the notification cannot be treated as a general notification.
- 3.8 Further, in respect of Zero Rated supplies, section 16(2) of the IGST Act, 2017, says that "credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply" which means even in Zero Rated supplies, tax may be paid by using ITC available. And further sub-section 16 (3) is only applicable to "registered person making zero rated supply" i.e. suppliers of Zero Rated Supplies, but here, the applicant is recipient and thus it is not covered under section 16(3). Overall, on a harmonious construction of section 9(3) of CGST Act, 20 (or section 5(3) of IGST Act, 2017 as the case may be) read with relevant notifications and section 16(3) of IGST Act, 2017 clearly stipulates that applicant is liable to pay tax under RCM.



- 3.9 Further applicant argues that section 7 of SEZ Act, 2005 provides for exemption in respect of all goods or services procured from a DTA (Domestic Tariff Area) or foreign suppliers as specified in first schedule. The term "taxes, duties or cess under all enactments specified in the First Schedule" does not cover IGST tax (or CGST/SGST tax), hence this section is not applicable in the instant case. Hence, the argument of the applicant is void.
- 3.10 Applicant also submitted that Section 26 of SEZ Act, 2005 deals with exemption of taxes in respect of services provided to a developer or unit to carry out the authorized operations in SEZ. The grant of exemption will be subject to terms and conditions as prescribed by the Central Government in terms of sub-section (2) of Section 26."
- 3.11 Section 26 of SEZ Act, 2005 is yet to be aligned with the CGST Act, 2017 and/or IGST Act, 2017 and till now the list of taxes under Section 26 of SEZ Act, 2005 does not yet cover exemption from IGST tax (or CGST/SGST tax). In the absence of such explicit mention provided in the section 26, for exemption from IGST tax (or CGST/SGST tax), the applicant's argument is null and void.
- 3.12 The applicant next argument that the 'Special Economic Zone (Amendment) Rules, 2018, vide Notification No. G.S.R. 909 (E), dated 19.09.2018, which came into effect from 19.09.2018 provides Exemption to SGST. In the instant case, there is liability with respect to IGST, hence Rule 5(5) (a) which deals with SGST, is not applicable in this case. Also, Rule 30(1) deals with procurement from DTA, which again is not applicable in the instant case, as the supplier is SEZ developer (and not DTA). Hence, the arguments made by the applicant are totally null and void.
- 3.13 Applicant has further submitted that "the Default List of Services approved by the Department of Commerce (F.No. D. 12/19/2013-SEZ dated 02.01.2018) for authorized operations specifically includes Renting of Immovable Property within its ambit."
- 3.14 In the instant case, SEZ developer is providing services to SEZ unit, which is covered under Reverse Charge Mechanism. Hence, the applicability of above notification cannot be determined in the absence of specific mention for Reverse Charge. Furthermore, the above notification is not included within any notification/circular/orders etc. issued by GST Council, and hence, it cannot over-ride CGST Act, 2017/IGST Act, 2017 or notification/circulars etc. issued the GST Council. Consequently, the liability of the applicant to pay under RCM remains intact as proved earlier.
- 3.15 Applicant has cited Andhra Pradesh and Telangana HC judgement in the case of GMR Aerospace Engineering Limited and another v/s Union of India and others (2019(8) TMI 748) in support of the contention that the SEZ Act -Section 51 has overriding effect.
- 3.16 The said judgement is in relation to Service Tax (Finance Act, 1994) which cannot be followed as a precedence for CGST Act or IGST Act, especially since the new concepts in GST such as Inter-state supplies and clearly defining conditions for Reverse Charge has made it in full alignment with SEZ Act. We have established the liability of the applicant for the payment of Reverse Charge with respect to IGST and have seen that it is in total alignment with the SEZ Act.



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Hence, as such there is no direct inconsistency/contention/contradiction in GST Acts vis-à-vis SEZ Act in the instant case, hence the over-riding effect of Section 51 or otherwise has no consequence. Thus, the applicant is liable to pay under Reverse Charge Mechanism.

3.17 Further a CESTAT Delhi judgement is cited by the applicant the case of M/s Metlife Global Operations Support Center Private Limited Vs Commissioner, Service Tax, New Delhi-2020 VIL-560-CESTAT-DEL-ST. The issue involved here also pertains to Service Tax (Finance Act, 1994), which cannot be followed as a precedence for CGST Act or IGST Act.

3.18 Alternatively, the applicant states that "the SEZ unit in terms of Section 16 of the IGST could exercise the option to provide LUT as provided in respect of supplies made from DTA to an SEZ unit specifically under Sec 16(3) of the IGST Act and since all the provisions of the Act are applicable in terms of Sec 5(3) of the IGST with respect to the applicant, they will be the recipient and supplier at the same time. Therefore, as a supplier the Applicant is entitled to the option available under Sec 16 for zero-rated supplies and to provide a LUT for the supplies received from the SEEPZ SEZ and in turn used for the authorized activities. Hence the Applicant is not required to make cash payment under reverse charge but effect supplies on the basis of an LUT at his option.

3.19 Section 5(3) of the IGST Act states that : 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. "

3.20 This section nowhere stipulates that under reverse charge the recipient will become supplier (or deemed supplier), it is just that the all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax. But still, the recipient would remain as recipient alone and supplier would remain as the supplier. Further, section 16(3) of IGST is applicable to the supplier alone. The applicant in the instant case is a recipient and thus, is not covered under the said section, thus there is no option for him to avail LUT. Hence the applicant is liable to pay under Reverse Charge Mechanism.

3.21 In view of the above, Applicant is required to discharge liability under RCM for procurement of renting of immovable property services from SEEPZ SEZ. Notification No. 13/2017 dated 28.06.2017, as amended notifies only specific category of services. Hence, applicability of the said notification cannot be decided in a general/blanket manner for all services. Hence, their second question which is quite general in nature and not specific and cannot be commented upon in absence of further information provided by the applicant. Finally, the applicants falls within the purview of "Inter-state Supply" leviable to IGST under provisions of Section 7(5) of the IGST Act.

3.22 Vide further letter dated 22.11.2021, the jurisdictional officer has stated as: "In this connection, it is to state that the department has already submitted reply on 01.02.2021. The submissions dt.



24.08.2021 made by M/s Portescap India Pvt. Ltd don't warrant any changes in previous reply. Hence, there is no change in previous reply dt. 01.02.2021."

4 REBUTTAL FILED BY APPLICANT TO JURISDICTIONAL OFFICER'S SUBMISSIONS

APPLICANT'S SUBMISSION DATED 15.02.2021:-

4.1 The theory of harmonious construction adopted in the CBIC Circular No 48/22/2018-GST dated 14-6-2018 will apply to the application of Notifications extracted above read with the overriding effect of SEZ Act as laid down in Sec 26 and 51 of the SEZ Act, 2005 read with the amendments made to synchronize the GST laws with the SEZ Rules 2006 in terms of Rule 30 to 33 of the said Rules relating to domestic tariff area procurement by SEZ Units. Hence, SEZ units have the option to either procure on the strength of the LUT or to make payment and claim refund. Therefore, this option provided in terms of Sec 16 of the IGST Act, 2017 and referred to in the SEZ Rules, 2006 cannot be denied to the SEZ units. Therefore, Sec 16 of the IGST Act, 2017 referred in the SEZ Rules, 2006 will prevail over Notification No. 13/2017 dated 28th June, 2017 as amended and applicant is not liable to discharge tax under reverse charge mechanism or alternatively can procure the services on the strength of LUT without having to make payment in cash.

4.2 With reference to the FAQ issued by CBIC that SEZ has to pay GST when it receives supplies which are under reverse charge mechanism, applicant would like to refer to Sectoral FAQ's issued by the CBIC clarifying the below:-

"6. When a SEZ unit or SEZ developer procures any goods or services from an unregistered supplier, whether the SEZ unit or SEZ developer needs to pay IGST under reverse charge or these will be zero rated supplies?

Supplies to SEZ unit or SEZ developer have been accorded the status of inter State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registered under GST. Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration. "

4.3 Therefore, based on a conjoint reading of the aforementioned points, it is evident that a supply to SEZ will be considered as an inter-state supply and as long as the same supply is used for authorized operations of the SEZ, the same will be zero-rated. As a recipient of supplies made by DTA to SEZ the Applicant is entitled to the option available under Sec 16 for zero-rated supplies to provide a LUT for the supplies received from the SEEPZ SEZ and used for the authorized activities of the SEZ. Hence Applicant is not required to make cash payment under reverse charge but receive supplies on the basis of an LUT at its option.

4.4 Reference to the jurisdictional officer's submissions that brings out the relevant extract from Notifications when recipient and supplier both are situated in SEZ, there is no question of import of services in the present case as both are located within India and thereby Notification No. 18/2017- Integrated Tax (Rate) dated 05.07.2017 is not applicable.



4.5 As per Section 2 (o) of SEZ Act 2005;

"Import" means—

(i); or

(ii) Receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

Hence, it is evident that receiving goods or services by a SEZ Unit from a SEZ Developer of same SEZ or different SEZ tantamounts to import of goods under the SEZ Act, 2005. In the instant case the SEEPZ SEZ is the Developer which is involved in the provision of service. Therefore, as per Notification No. 18/2017- I.T.(Rate) dated 05.07.2017, SEZ Unit is exempted from whole of the IGST leviable under Section 5 of IGST Act, 2017.

4.6 Based on the Lohani Committee report GST laws were aligned with the SEZ laws in 2018 and the amendment to Rule 30 of the SEZ Rules, 2006 conclusively establishes that the Applicant is entitled to receive the supplies from DTA either under LUT or on payment under reverse charge in terms of Sec 16 of the IGST Act 2017. Further with regard to the SEZ Developer this is clearly as defined in the SEZ Act as a case of import as defined therein and hence the benefit of tax free procurement in terms of Notfn No 18/ 2017- Integrated Tax (Rate) dated 05.07.2017 is conclusively available to the SEZ unit.

4.7 Applicant states that Notification No. 18/2017 –I.T. (Rate) will prevail over Notification No. 13/2017 dated 28.06.2017 as amended in so far as supplies from DTA are concerned and with respect to other DTA procurement Rule 30 of the SEZ Rules 2006 which refers to Sec 16 of the IGST Act will apply and therefore SEZ Unit is exempted from payment of tax.

4.8 Applicant would like to rely on the judgment of the Hon'ble Telangana and Andhra Pradesh High Court in GMR AEROSPACE ENGINEERING LIMITED AND ANOTHER VERSUS UNION OF INDIA AND OTHERS (2019 (8) TMI 748).

4.9 Without prejudice to any of the other submission made herein above and in the alternative, Applicant submits that even for purpose of argument it is assumed that "reverse charge" notifications as aforesaid are applicable even then the SEZ unit in terms of Section 16 of the IGST could exercise the option to provide LUT as provided in respect of supplies made from DTA to an SEZ unit specifically under Sec 16(3) of the IGST Act. This is because in terms of Sec 9(3) of CGST or Sec 5(3) of the IGST the recipient of such goods or services is subject to all the provisions of the Act as if such recipient is the person liable for paying the tax in relation to the supply of such goods or services. Applicant submits that since all the provisions of the Act are applicable in terms of Sec 5(3) of the IGST with respect to the applicant, they will be a recipient and supplier at the same time. Therefore as a supplier to the SEZ, the Applicant is entitled to the option available under Sec 16 for zero-rated supplies and to provide a LUT for the supplies received from the SEEPZ SEZ and in turn used for the authorized activities of the SEZ. Hence the Applicant is not required to make cash payment under reverse charge but effect supplies on the basis of an LUT at his option. "



APPLICANT'S SUBMISSIONS DATED 24.08.2021

- 4.10 Applicant has submitted that Ministry of Finance vide F. No 334/335/2017-TRU dated December 18, 2017 has issued letter in the context of reverse charge mechanism liability on procurement of service by International Financial Services Centre, SEZ which clarifies that – “ a Unit in SEZ or SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of integrated tax provided the actual recipient i.e., unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place”.
- 4.11 Additionally, in the said letter, it has been clarified that – “The above provisions shall apply mutatis mutandis in respect of supply of services covered under Notification No. 13/2017-CT (Rate) to a unit”.
- 4.12 The applicant filed an RTI application to find out details pertaining to the aforesaid letter dated 18.12.2017 and received response from the concerned RTI Authority, as under:-
“The aforesaid RTI Request is disposed off as on 22 July, 2021 and mentioned that – “The said communication F. No. 334/335/2017-TRU dated December 18, 2017 is not circular perse, it was issued to the recipient on request for clarification of certain issue. The said communication is self-explanatory”.
- 4.13 Applicant has submitted that, the Communication Letter issued by Ministry of Finance vide F. No 334/335/2017-TRU dated December 18, 2017 is valid / genuine and issued by the aforesaid authority on request for clarification on RCM applicability issue.
- 4.14 Applicant has submitted that, in case any clarification / judgement is issued by board /competent authorities and if facts are similar in other case then such clarification / judgement should be followed consistently and in accordance with binding judgements / clarifications rendered by competent Board or Courts or Tribunals and have relied on the judgment of Hon'ble Gujarat High Court in case of Darshan Boardlam Ltd. Versus Union of India.
- 4.15 Further, applicant has placed reliance on Hon'ble Delhi High Court judgement issued in case of Interglobe Aviation Ltd Vs. Union of India and ANR wherein Hon'ble bench observed the following- “If the facts are similar and there is a binding judgment in existence, it is bound to be followed by the officers of the Respondents. Even if officers of the Respondents keep changing, decision making process must be consistent and in accordance with binding judgements rendered by competent Courts or Tribunals. Consistency is the virtue of the adjudicating Authority. It is submitted that it is a settled position of law that the department cannot take contradictory stand on the same facts and issue in different proceedings. Applicant also relies on the following decisions;
- Damodar J. Malpani vs. CCE: 2002 (146) ELT 483 (SC)
 - Ralli Enginer Ltd. vs. UOI: 2004 (4) TMI 590 –Guj. HC
 - Steel Authority of India vs. CC, Bombay: 2000 (115) ELT 42 (SC)



4.16 Applicant also relies on the ruling of the Hon'ble CESTAT, Mumbai, in the case of Commissioner of Central Excise, Mumbai-III Versus M/s. Narendrakumar and Co – "The respondents under the RTI Act, sought information of the identical products, as is manufactured by them, from various Commissionerates. We find that the various Commissionerates spread all over India, had clearly spelt out, that the products in question are classified under Chapter 09 and in some of the Commissionerates, the assesses had not taken out the Central Excise registration certificate also. We find from the chart produced by the Ld. Counsel, the ingredients of the products in question are identical to the products which are manufactured by other assessee situated in different Commissionerates. The question of uniformity taxation is of prime importance. We find that the Hon'ble Supreme Court in the case of Damodar J. Malpani Vs. Collector of Central Excise as reported at [2002 (146) E.L.T. 483 (S.C.)]". Therefore, we submit that the authorities should take into consideration the clarification issued by Ministry of Finance vide F. No 334/335/2017-TRU dated December 18, 2017.

05. HEARING

5.1 Online e-hearing in the case was held on 21.01.2021. On the final online e-hearing, the Authorized Representatives of the applicant, Shri Aniket Singh, Shri Nitin Khot, Shri Lokwani Jai and Advocate Shri Tirumalai Sampathkumaran were present. Jurisdictional officer Shri Bhanu Jain, Deputy Commissioner, Divn X, CGST & Central Tax, Mumbai East was also present. The Authorized Representatives made oral submissions and explained the facts of the case. The Jurisdictional officer stated that the hearing letter was received on 18.01.2021 and requested for time to make written submissions, which was granted for a week. The Authorised Representative further stated that they would be making fresh counter submissions, to the submissions to be made by the jurisdictional officer.

5.2 Final online e-hearing was held on 05.10.2021. The Authorized Representatives of the applicant, Shri Aniket Singh, Senior Manager Shri Lokwani Jai, Deputy Manager and Advocate Shri Tirumalai Sampathkumaran were present. Jurisdictional officer Shri Pravin Nikhade, Assistant Commissioner, Divn X, CGST & Central Tax, Mumbai East was also present. The Applicant contended that it was having a letter dated 18.12.2017 from TRU and also an RTI reply received in respect of the TRU letter dated 18.12.2017. The Authorized Representatives made oral and written submissions in the matter. The Jurisdictional officer also made written submissions.

5.3 Heard both the sides.

06. DISCUSSIONS AND FINDINGS

6.1 As per the direction of the Appellate Authority for Advance Ruling, Maharashtra State, fresh hearing was given to the applicant. We have gone through the facts of the matter, documents on record, and written submissions of the applicant and oral/written contention of the jurisdictional officer.



- 6.2 In the subject case, as per the sub lease agreement dated 09.01.2020 it is seen that M/s Portescap India Pvt. Ltd., the applicant, is an SEZ Unit, engaged in exports of manufactured goods and has taken on lease, immovable property from the Seepz Special Economic Zone Authority (Local Authority), situated at SEEPZ Service Centre building, Andheri East, Mumbai-400096. The immovable property which is taken on lease is in SEEPZ i.e. within SEZ area.
- 6.3 The first question raised by the applicant is whether they are required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from SEEPZ Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28.06.2017 read with Notification No. 03/2018 – C.T. (Rate) dated 25.01.2018. The second question is also similar, the only difference is that, in the second question they have asked whether they are required to pay tax under reverse charge mechanism on procurement of other services from the said Authority under the said Notification.
- 6.4 The applicant, in their submissions have stated that they procure Rental Services from SEEPZ, SEZ Authority, Mumbai-400096 which is a Local authority having GSTIN 27AAALS4995G. Applicant is a SEZ Unit while the SEEPZ SEZ Authority is a SEZ Developer.
- 6.5 As per Section 7(5) (b) of the IGST Act, 2017, Supply of goods or services or both, to or by a Special Economic Zone developer or a Special Economic Zone unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Thus the subject transaction will be in the course of Inter-State trade or commerce and therefore the provisions of the IGST Act, 2017 will be applicable in the subject case. Therefore we look at some of the provisions of the IGST Act, 2017 in the following paras.

6.6 Since the query of the applicant concerns the reverse charge mechanism under GST Laws, we reproduce Section 5 (3) of the IGST Act, as under:-
Reverse charge mechanism – Sec 5(3) of IGST Act
" 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."

- 6.6.1 Sr. No. 6 of Notification No. 10/2017- I.T.(Rate) dated 28.06.2017 is reproduced as under:-


Notification No. 10/2017- Integrated Tax (Rate),dated 28th June, 2017

In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, 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 as specified in column (4) of the said Table:-

Table

Sr. No.	Category of Supply of Services	Supplier of service	Recipient of service
1	2	3	4
6	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Postsprovided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

Notification No. 10/2017- I.T. (Rate) dated 28.06.2017 was amended by Notification No. 3/2018- I.T.(Rate)-dated 25.01.2018 so as to insert Sr. No 6A after Sr. No. 6. The amended Notification is as under:-



Sr. No.	Category of Supply of Services	Supplier of service	Recipient of service
1	2	3	4
6A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017 read with clause (v) of section 20 of Integrated Goods and Services Tax Act, 2017.

- 6.6.2 While the government, vide the said Section 5 (3) of the IGST Act, has notified specified categories of goods and services where tax shall be paid by the recipient on reverse charge basis, Notification No. 10/2017- I.T. (Rate) dated 28.06.2017, as amended by Notification No. 3/2018- I.T. (Rate)-dated 25.01.2018 clearly states that in case of supply of services by any local authority, by way of renting of immovable property, to a person registered under the CGST Act, 2017 (12 of 2017), the person receiving the said service and registered under the CGST Act, 2017 read with clause (v) of section 20 of IGST Act, 2017, has to discharge GST on the transaction.
- 6.6.3 In the instant case, as submitted by the applicant, they are receiving renting of immovable property services from a local authority i.e. SEEPZ SEZ and the applicant is registered under the CGST Act, 2017. Hence the applicant must discharge service tax liability under reverse charge mechanism as per the provisions of the amended Notification No. 10/2017- I.T. (Rate) dated 28.06.2017. The RCM provisions provide that all provisions of the IGST Act shall apply as if the recipient person is liable to pay tax. The subject case satisfies all the conditions of Notification

No. 10/2017- I.T. (Rate) dated 28.06.2017 as amended, and therefore as per section 5(3) of IGST Act, 2017, we are of the opinion that, the applicant is liable to pay tax under Reverse Charge Mechanism.

- 6.6.4 We now reproduce Question No. 41 of the FAQ dated 15.12.2018 issued by the CBIC which is as under:-

Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?

Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case.

- 6.6.5 The FAQ mentioned above very clearly states that under reverse charge mechanism notified services, a SEZ has to pay GST as a recipient of service.

- 6.7 Applicant has cited Notification No. 18/2017- I.T.(Rate) to state that the renting of immovable property services are imported by them and are therefore exempted from IGST. Applicant has cited Section 2 (o) of SEZ Act 2005, which defines the term "Import" and have come to a conclusion that, receiving goods or services by a SEZ Unit from a SEZ Developer of same SEZ or different SEZ tantamounts to import of goods under the SEZ Act, 2005 and since, based on the Lohani Committee report, GST laws were aligned with the SEZ laws in 2018 the benefit of tax free procurement in terms of Notification No 18/ 2017- I.T. (Rate) dated 05.07.2017 is available to them.

- 6.8. As per Section 2 (11) of the IGST Act, 2017 "import of services" means the supply of any service, where— (i) the supplier of service is located outside India; (ii) the recipient of service is located in India; and (iii) the place of supply of service is in India;

- 6.8.1 Further, as per sub-section 2(56) of CGST Act, 2017 "India" means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.

- 6.8.2 The applicant, a SEZ Unit, is situated in an Exclusive Economic Zone and as per the aforesaid definition mentioned above; the term 'India' includes an exclusive economic zone. Therefore in the subject case both, the recipient and supplier of services are situated in India. Hence, Notification No. 18/2017 is not applicable in this case. We agree with the submissions of the jurisdictional officer on this issue.

- 6.9 Applicant submitted that "reverse charge" notification is a general notification and will have to yield to the specific provision made in Sec 16 of IGST Act." In this regard, it is to be noted that Notification No. 10/2017- I.T. (Rate) dated 28.06.2017, as amended specifically define the conditions, detailing each and every service specifically and further putting on conditions on



recipient and suppliers specifically. In fact, the said notification specifically covers "Renting of Immovable property", hence the notification cannot be treated as a general notification.

6.10 Section 16 of IGST Act, 2017 specifies that:

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.

6.10.1 In respect of Zero Rated supplies, the sub-section 16(2) of IGST Act, 2017 itself says that credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Further sub-section 16 (3) is only applicable to "registered person making zero rated supply" i.e. suppliers of Zero Rated Supplies, but here, the applicant is recipient and thus it is not covered under section 16(3). Overall, a harmonious construction of section 5(3) of IGST Act, 2017 read with relevant notifications and section 16 of IGST Act, 2017 clearly stipulates that applicant is liable to pay tax under Reverse Charge mechanism.

6.11 With reference to Applicant's submissions that Section 26 of SEZ Act, 2005 deals with exemption of taxes in respect of services provided to a developer or unit to carry out the authorized operations in SEZ, we find that Section 26 of SEZ Act, 2005 has not yet been aligned with the CGST Act, 2017 and/or IGST Act, 2017 and the list of taxes under Section 26 of SEZ Act, 2005 for exemption, does not cover IGST/CGST/SGST. There is absence of any mention in the said section 26, to provide for IGST/CGST/SGAT/ exemptions.

6.12 The applicant has cited a couple of case laws/judicial pronouncements in support of their contention that they are not liable to pay tax under reverse charge mechanism. We find that the case laws referred by the applicant pertains to service tax matters and therefore will not be applicable in the subject case.



- 6.13 Alternatively, the Applicant has submitted that even if, for purpose of argument, it is assumed that "reverse charge" notifications are applicable, then the SEZ unit i.e the applicant, in terms of Section 16 of the IGST, could exercise the option to provide LUT as provided under Sec 16(3) of the IGST Act because in terms of Sec 5(3) of the IGST the recipient of such goods or services is subject to all the provisions of the Act as if such recipient is the person liable for paying the tax in relation to the supply of such goods or services.
- 6.13.1 As per Section 5(3) of the IGST Act, *the Government may 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.*"
- 6.13.2 As submitted by the jurisdictional officer, this section stipulates that all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax. The fact of the matter is that in the subject transaction, the applicant is not a supplier of the impugned services and has no option to avail the procedure under LUT/Bond.
- 6.14 Vide the second question the applicant has asked whether they are required to discharge liability under Reverse Charge Mechanism for procurement of other services. Notification No. 10/2017-I.T. (Rate) dated 28.06.2017- amended by Notification No. 3/2018- I.T. (Rate)-dated 25.01.2018, notifies only specific category of services on which tax is payable under reverse charge mechanism. Hence, applicability of the said notification cannot be decided in a general/blanket manner for other services mentioned by the applicant because the "other services" are not enumerated by the applicant. Hence, their second question which is quite general in nature and not specific and cannot be answered, in absence of proper information provided by the applicant.
- 6.15. The third question raised by the applicant is under which head tax they will be required to discharge tax, if any, under reverse charge mechanism. We have already held above that the tax will have to be discharged under IGST.
- 6.16 Applicant vide letter dated 24.08.2021 has submitted that Ministry of Finance vide F. No 334/335/2017-TRU dated December 18, 2017 has issued letter in the context of reverse charge mechanism liability on procurement of service by International Financial Services Centre, SEZ which clarifies that – "a Unit in SEZ or SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of integrated tax provided the actual recipient i.e., unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place". The applicant filed an RTI application to find out details pertaining to the aforesaid letter dated 18.12.2017 and the concerned RTI Authority has stated that the said communication F. No. 334/335/2017-TRU dated December 18, 2017 is not circular perse and was issued to the recipient on request for clarification of a certain issue.
- 6.17 From the documents submitted by the applicant, we find that the said clarification dated 18.12.2017 was given to M/s Gujarat International Finance Tec-City Co. Ltd., Gujarat, in respect



of clarification sought on “whether input services such as legal service, sponsorship service, etc., received by a unit in International Financial Services Centre, SEZ for procurement of input services from a unit in Domestic Tariff Area which are chargeable to GST on reverse charge basis, GST is payable by the unit in IFSC SEZ receiving such services”.

- 6.18 It is seen that in the referred case the issue is receipt of input services from a DTA while in the subject case the receipt of input service is from a SEZ Developer and therefore the issues in both cases cannot be considered as same. Further, the concerned RTI Authority has informed the applicant that, the said communication issued vide F. No. 334/335/2017-TRU dated December 18, 2017 is not a Circular perse. This communication not being a Circular and only a clarification on some particular matter of a particular person cannot be made applicable in the present case and the said communication cannot be treated as a binding clarification / judgement issued by board /competent authorities to be made applicable to all cases.
- 6.19 Further, the decision of the Hon’ble Delhi High Court in case of Interglobe Aviation Ltd Vs. Union of India and ANR wherein Hon’ble bench observed that if the facts are similar and there is a binding judgment in existence, it is bound to be followed by the officers of the Respondents, is not applicable in the subject case due to reasons mentioned in para no. 6.18 above.
- 6.20 Similarly, the ruling of the Hon’ble CESTAT, Mumbai, in the case of Commissioner of Central Excise, Mumbai-III Versus M/s. Narendrakumar and Co, relied upon by the applicant is also not applicable in the present case.

6.21 We do not agree with the applicant’s contention that the communication issued by Ministry of Finance vide F. No 334/335/2017-TRU dated December 18, 2017 and addressed to one particular company on a particular matter should be treated as a general clarification to be followed in all cases.

07. In view of the above discussions, 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)

For reasons as discussed in the body of the order, the questions are answered thus –

- Q1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25th January 2018?

Answer: Answered in the affirmative.

Q2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25th January 2018?

Answer: Not answered in view of discussions made above.

Q.3. If, answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?

Answer: The tax will be discharged by them under IGST head.



RAJIV MAGOO
(MEMBER)

T. R. RAMNANI
(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. The Joint Commissioner of State Tax, Mahavikas for Website.

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. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.