

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

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| GSTIN Number, if any/ User-id | 27AABCJ6665J1Z6 |
| Legal Name of Applicant | Jotun India Private Limited |
| Registered Address/Address provided while obtaining user id | D 280, RANJANGAON INDUSTRIA ESTATE, PUNE NAGAR ROAD, RANJANGAON, Pune, Maharashtra, 412220 |
| Details of application | GST-ARA, Application No. 24 Dated 16.05.2018 |
| Concerned officer | Dy. Commissioner of Sales Tax(E-607) Large Tax Unit-II, Mumbai. |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought | |
| A Category | Factory / Manufacturing |
| B Description (in brief) | We supply paints and coatings that are specially designed for unique conditions. |
| Issue/s on which advance ruling required | (iv) admissibility of input tax credit of tax paid or deemed to have been paid (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"] by Jotun India Private Limited, the applicant, seeking an advance ruling in respect of the following issue:-

- Whether the supply of goods which are moved from a place located outside taxable territory and are delivered at a place outside taxable territory, would be liable to tax in India under section 7(5)(a) of IGST Act?*
- If answer to (a) is yes, whether the recipient of the goods i.e. person liable to pay consideration, be eligible to avail the input tax credit of the said goods?*

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION - AS PER THE APPLICANT**

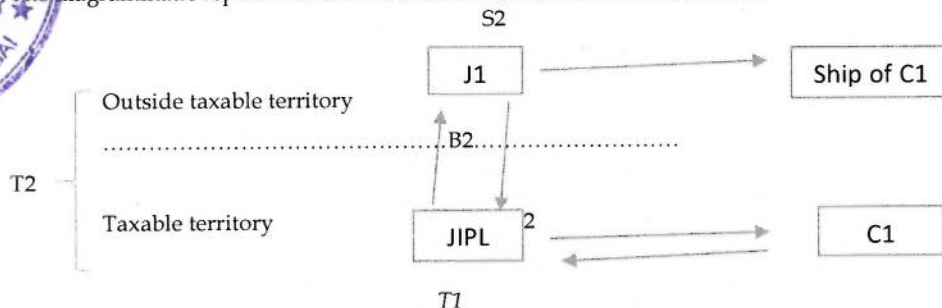
The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS AS PROVIDED IN ANNEXURE 1

Brief Background of the Transaction:

- Jotun Group is a leading supplier of paints and powder coatings. The affiliates of the group has worldwide presence. The Applicant i.e. Jotun India Private Limited, being one of the Group entities, is a supplier, exporter and manufacturer of paints and powder coatings. The Applicant supplies paints and coatings that are specially designed for unique conditions to the various customers.
- Broadly, the paints supplied by the applicant can be categorized in Solvent based paints and Water based paints. One of the major supplies by Applicant are marine paints. Composition of such marine paint being manufactured by Applicant makes it suitable for ships during building stage and even during maintenance. Thus the applicant is involved in supplying the said goods for the vessel at the time of ship building (hereinafter referred to as New Building Supplies) and also as consumables on board of vessel for the purpose of maintenance purpose (hereinafter referred to as Dry Dock Supplies and Sea Dock Supplies)
- Applicant caters to paint and coating requirements for ships within India. It has been mutually agreed between all entities of the Group that any requirement of supply of goods (paints) within a Country where Jotun Group entity is present would be served by that particular entity. Consequently in case where the applicant gets an order from Indian customer to supply paints to ship located near Norway, entity of Jotun Group located in Norway would be serving the said order by supplying paints to that ship and thereafter raising an invoice on the Applicant in this regard.
- To elaborate, sequential flow of transactions under such situation is presented as under:
 - (a) A customer located in taxable territory ('C1'), places an order on applicant (JIPL) to supply goods (paint) as a new building , dry dock supply or sea dock supply to its ship / vessel located near Norway i.e. a place outside taxable territory.
 - (b) Further basis the global group policy of Jotun, JIPL places back to back purchase order on Jotun's entity located nearest to the location of such ship/ vessel i.e. Jotun Norway ('J1'). The said order would be meant for supplying desired goods at the ship of customer.
 - (c) Accordingly goods available at that location, would be moved to the destination i.e. place of vessel / ship
 - (d) Thereafter, basis Jotun Norway would be raising an invoice on JIPL thereby transferring the ownership to JIPL and subsequently JIPL would be raising an invoice on C thereby ultimately transferring the ownership to the Customer.

The diagrammatic representation of the transactions executed is as below:



Where,

C1. Customer located in taxable territory

J1 - Jotun Norway

B2- Bill to

S2- Ship to

T1- Transaction 1

T2- Transaction 2

- The Applicant is making detailed submission herein below to demonstrate why GST should not be applicable on the transaction under consideration.

STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED

A. Levy of IGST cannot be extended beyond territorial jurisdiction of the said legislation

Evaluating IGST provisions to understand possibility of levying IGST

- A1. In order to deliberate on the question being sought, it is pertinent to analyse applicability of provisions of IGST Act, 2017 in terms of nature of the transaction.
- A2. Section 7 of IGST Act, 2017, makes provision to treat the transactions as 'interstate supply'. In this regard, the Applicant hereby wishes to submit following provision of IGST Act, 2017 which would be relevant in analysing the needful:

Section 7(5) of IGST Act, 2017 which reads as under

(5) Supply of goods or services or both, –

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere

in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.'

...(Emphasis provided)

A3 Basis the above emphasis, supply of any goods or services where

- The supplier located in India and

- Place of such supply is outside India

would be considered as inter-state supply. In this regard, it would be very crucial to evaluate meaning of the terms 'Supplier' as well as 'Place of Supply' while concluding the nature of transactions in such situation.

A4 The term 'Supplier' has not been separately defined under IGST Act, 2017. However the definition of the same could be adopted from Section 2(105) of CGST Act, 2017 which reads as under: "supplier in relation to any goods or services shall mean the person supplying the said goods or services and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied"

A5 For the purpose of determining 'Place of Supply of Goods', section 10 of IGST Act needs to be referred wherein provisions for determining place of supply has been laid down for various situations

"10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, (a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient

(b).....

(c).....

(d)-----

(e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Applying the above provisions in the current situation, it could be construed that

A6 For Dry Dock supply of goods –

The Applicant is supplying paints to the Customer located in taxable territory. Hence the Applicant would be considered as 'Supplier'. Further under the said transaction, movement of goods is caused by supplier i.e. the Applicant for the recipient i.e. Customer located in taxable territory are involved, the place of supply in such situation would be determined in terms section 10(1)(a). Accordingly place of supply in such case would be location of goods at the time at which the movement of goods is terminated for delivery i.e. place outside India.

For Sea Dock supply of goods

The Applicant is supplying paints to the Customer located in taxable territory. Hence the Applicant would be considered as 'Supplier'. Further under the said transaction, the goods are supplied on board of a vessel, the place of supply of goods in such situation would be arrived in terms of section 10(1)(e). Accordingly place of supply in such case would be location at which goods are taken on board i.e. place outside India.

A7. Consequently it appears that the above transaction would be considered as 'inter-state supply' in terms of section 7(5)(a) where supplier is located in India and place of supply is outside India.

A8. However, the Applicant intends to draw your kind attention to section 1(2) of IGST Act which determines the extent of applicability of IGST Act. As per the said section IGST Act extends to whole of India except State of Jammu and Kashmir. Further 'India' has been defined in section 2(56) of CGST Act read with section 2(24) of IGST Act to mean '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.'

A9. Hence, Applicant wishes to contend that scope of IGST Act is limited to territorial jurisdiction to which it extends. Thus, IGST levy can be introduced only to supplies within the territorial jurisdiction of the IGST Act. In case of T1 under both the situations, the supply could be construed to take place outside the territorial jurisdiction of IGST Act. Hence, the levy in the said case, in terms of section 5 of IGST Act read with section 7(5)(a) would mean traveling beyond the jurisdictional powers to levy IGST. In light of this, Applicant contends that levy of IGST on said transaction would be ultra vires the IGST Act.

A10. Further as discussed above, GST is limited to the territorial waters of India and hence all the applicable sections in terms of supply, time of supply, place of supply etc would be limited to goods or services or both as much as they take place in India. For section 7(5)(a) to come into play, the place of supply should be outside India and to determine the place of supply the provisions of Section 10(1)(a) and section 10(1)(e) seems to be relied on. The Applicant contends that the provisions of GST are travelling beyond its powers by stating that for the transaction under question where the goods are lying outside India i.e. in Norway, the place of supply shall be outside India. Hence, the Applicant pleads that it is outside the jurisdictional powers of the GST law to determine the place of supply for goods when such goods are not located in India.

A11. Given the aforesaid, the tax cannot be said to be payable on the transaction under consideration as the subject i.e. goods, on which tax is payable are supplied outside India i.e. beyond the jurisdictional extent of IGST Act, 2017.



- B. Constitution only permits 'sale in the course of import' to be considered as interstate supply, hence, extending the scope of section 7(5)(a) of IGST Act to 'out to out supply' would be unconstitutional
- B1. It is no more res-integra that no tax shall be collected unless there is constitutional validity to levy the same. In this regard, we wish to draw your attention to following Article of The Constitution of India which empowers the Central Government and State Governments to levy GST.
- B2. The said article reads as under:
ARTICLE 269-A: Levy and collection of goods and services tax in course of interstate trade or commerce -
 (1) Goods and services tax on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on recommendations of the Goods and Services Tax Council.
Explanation - For the purposes of this clause, 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 course of inter-state trade or commerce.
 (2) ...
 (3) ...
 (4) ...
 (5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-state trade of commerce.
- B3. On plain reading of the above provisions, it can be seen that,
 (a) Basis clause (5) of article 269-A, the Parliament may, by law, formulate the principles for determining the place of supply and when a supply of goods or of services or both takes place in the course of inter-state trade or commerce. The power given is to formulate principles to decide 'when a supply takes place in the course of inter-state trade or commerce'.
 (b) The word 'inter-state' is not defined in the constitution. Therefore the natural meaning of the term 'inter-state' needs to be adopted, i.e. 'between states'. Involvement of more than one state.
 (c) Consequently, for any transaction if only one state is involved, the said supply cannot be termed as 'inter-state'.
 (d) For formulating the principles to determine when a supply takes place in the course of inter-state trade and commerce, the underlying transaction should be 'inter-state'. Only after fulfilment this test, the principles can be formulated to determine 'in course of inter-state trade or commerce'.
 (e) In our view, this could be the only reason for providing Explanation to clause (1) of article 269-A. Based on the same, an import is considered to be transaction 'in the course of inter-state trade or commerce' despite of the fact that only one State is involved in such transaction.
 (f) Thus any transaction, other than mentioned above, involving only one State, could not be termed as 'inter-state' and thus for such transaction the constitution has not given power to Government to formulate the principle as contemplated by Article 269-A (5).
 (g) The provisions of section 7(5)(a) ultra vires the law, since the law has defined a specific transaction to be an inter-state supply without having adequate powers to do so. Since the Constitution of India has neither defined such transactions to be an inter-state transaction nor given powers to determine so, the provisions ought to be treated as ultra-vires.
- C. Cross-border transactions are being covered under 'Inter-State supply' only to exclude the same from purview of State Government, however, that would not conclude IGST applicability unless authorised
- C1. Applicant wishes to submit that section 7 and section 8 of IGST Act have been enacted to lay down principles to determine nature of supply to be 'inter-State supply' and 'intra-State supply' respectively. Thus, the objective appears to be to delineate powers of State Government to levy respective GST only on 'intra-State supply' and not to cover 'Inter-State supply'.
- C2. However, section 7 or section 8 of IGST Act should not, in isolation, be read as sections enabling levy of IGST on all supplies covered therein. IGST Act needs to be read in harmonious manner considering the constitutional empowerment and extent of its applicability to determine levy. Merely because a transaction gets covered under section 7(5)(a) would not empower Central Government to levy and collect IGST on the said transaction, unless there is express provision to that extent and unless it is covered under territorial jurisdiction of IGST Act.
- C3. Applicant wishes to draw your kind attention to proviso to section 8 which states that following supply of goods shall not be treated as intra-State supply -
 (i) Supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
 (ii) Goods imported into territory of India till they cross the Customs frontiers of India;
 or
 (iii) Supplies made to a tourist referred to in section 15
 The above mentioned list has been excluded from ambit of 'intra-State supply' so that administrative and jurisdictional powers would vest with Central Government and not State Government.
- C4. In view of above submission, Applicant contends that section 7(5)(a) should be read only to exclude such transactions from the purview of State Government and said section should not be considered as piece of legislation which is empowering Central Government to travel beyond territorial jurisdiction and levy IGST on all transactions, covered therein.
- D. The term 'Zero-rated supply' should be read in liberal manner and should not be restricted only to taking of goods outside India



- D1. Attention is invited to section 16 of IGST Act, which provides that 'Zero rated supply means any of the following supplies of goods or services or both:
(a) Export of goods or services or both; or
(b) Supply of goods or services or both to a Special Economic Zone developer or unit
- D2. Further Section 2(5) of IGST Act defines 'export of goods' with its grammatical variations and cognate expressions, means taking goods out of India to a place out of India.
- D3. From the conjoint reading of the abovementioned provisions it can be inferred that any inter-state supply would qualify to be zero-rated only if it falls within the purview of export or supply to SEZ.
- D4. Furthermore in order to identify these supplies as Zero-rated in terms of IGST Act, the same have been covered under the purview of inter-State supply. However, this cannot be interpreted to mean that all other supplies falling within the purview of Section 7(5)(a) of IGST Act but not covered under section 16 of IGST Act would be considered as liable to IGST.
- D5. Though the term 'Export covers the cases of taking goods out of India, principally, even goods being supplied to customer located in India but delivered at a location which is outside India, should get covered under the purview of term 'Export'.
- D6. Interpreting the term 'Export to only cover supplies where goods are taken out of India would be restrictive and would disregard the principle of consumption based tax. 'Export of goods' should be interpreted in a broader way to cover such cross-border transaction where goods are delivered outside India even if not taken from India.
- D7. Restricting the concept of export only to cases involving movement from India would mean disregarding the fact that place of supply is outside India. Thus, the Applicant pleads for extending the meaning of 'export of goods' even to cases where goods are delivered to customer outside India even if not taken from India.
- D8. Assuming without accepting that such supplies would not qualify as 'zero rated supply', the same should, at least, be treated as not liable to GST since the concept of 'exports could be deemed to be covering a case where the goods are consumed/ used outside India.
- D9. Under erstwhile Service Tax legislation, if the place of provision of service was outside India but other conditions of 'Export' were not getting fulfilled then the export linked benefits were not made available to such services. However, at the same time, they would still not be liable to service tax. Accordingly, Applicant pleads that even if transaction in question may not be considered as 'Export of goods', the same should be considered as not liable to IGST even though any benefits of 'Zero rated supply may not be granted.
- Place of Supply of Service specifically covers case where recipient is located outside India, unlike Place of Supply of Goods**
- E1. Applicant submits that Section 12 and Section 13 of IGST Act delineates place of supply of service in cases where location of both supplier and recipient is in India as well as cases where either of the party is located outside India. However in case of goods, place of supply is to be determined in terms of section 10 or 11 of IGST Act which provides for determining place of supply separately for domestic supplies and for export/import transactions.
- E2. Your kind attention in this regard, is invited to proviso to section 12(3) of IGST Act, 2017, which provides that in case of supply of service in relation to immovable property or boat or vessel is located outside India but the supplier and recipient are located in India, then the place of supply shall be the location of the recipient. For your reference we have reproduced relevant portion of section 12(3) of IGST Act, 2017
(3) The place of supply of services, -
(a) ---
(b) -
(c) -
(d)---
Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.
...(Emphasis provided)
- E3. It can be observed from the aforesaid provisions that there is specific provision in case of services wherein it is specifically provided that the place of supply shall be the location of immovable property. However, if both the supplier and recipient are in India and location of immovable property or boat or vessel is outside India then the place of supply, for the purpose of GST, will be location of the recipient of service.
- E4. Similar provisions were provided in Rule 8 of Place of Provision of Services Rules, 2011 under Service Tax regime.
We have reproduced the said provisions below:
'8. Place of provision of services where provider and recipient are located in taxable territory
Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.'
- E5. It can be observed that in case of services, the legislature have always specifically provided for levying tax depending on the location of supplier and recipient. However, in case of goods there is no such provision which states that, even where goods are situated/used/ consumed outside India and the location of the supplier and the recipient is in India, the place of supply shall be outside India.
- E6. Accordingly, it can be inferred that for the purpose of levy of GST on services, location of supplier and recipient would be relevant and if both are in India then the same would be liable to GST. However, in case

of goods location of supplier and recipient is not relevant and levy would then get linked to location of goods. Thus, in case of transaction in question, since location of goods is outside India the levy should not arise in India in the absence of specific provision in this regard.

F. **Circular issued for High Sea Sales will be applicable to the transaction under consideration**

F1. Under Circular No 33/2017 - Customs dated August 01, 2017, a clarity was provided as regards tax implications on High Seas Sales. Based on the same, it was decided that levy of IGST on High Seas transactions of imported goods, shall be only at the time of importation i.e. when import declarations are filed before Customs authorities for clearance purposes. Accordingly, IGST liability arising on such transactions would be disposed of only once, by the ultimate importer who clears the goods for home consumption. Consequently first leg of High Seas Sales, where goods are supplied out of India, would be exempted from payment of IGST.

F2. *The relevant para of the circular is reproduced below:*

4. GST Council has deliberated on the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea shall form part of the value on which IGST is collected at the time of clearance.'

...(Emphasis provided)

F3. The Circular clearly mentions that the tax is leviable only at the time of importation of goods in India and not when the goods are sold while they are in High Seas. Similarly, when the goods are in Norway i.e. outside India, it can be said that since, the goods are outside India, no GST is applicable on the same as the subject on which tax is being levied are never brought in territory of India.

F4. Similar view was also adopted by the Hon'ble Advance Ruling Authorities of Kerala in case of *M/s Synthite Industries Ltd* where it was ruled that 'the applicant is neither liable to GST on sale of goods procured from China and directly supplied to USA nor on sale of goods stored in the warehouse of Netherlands, after being procured from China, to customers in and around Netherlands, as the goods are not imported into India at any point'.

Further another circular was issued by CBEC to clarify the tax applicability of goods lying in bonded warehouse. Circular No. 46/2017-Customs dated 24th November 2017, provided that in case the goods are sold while the same lying in bonded warehouse, the same shall be chargeable to GST.

It is pertinent to note that one of the basic reasons behind differential tax treatment in both the circulars above is that in case of High Seas the goods are not in India while in case of warehoused goods, the goods are in India.

Given the aforesaid, the Applicant hereby submits that the tax on supply of goods would not be applicable when the same are sold to its customers in India but the physical movement of the goods is outside India.

No state code available in GST returns to mention the Place of Supply in case of these transactions

A taxpayer is required to report all the transactions carried out by him in his GST returns i.e. GSTR-1 and GSTR-2. Further, the supplier of goods and/ or services has to mention State code of place of supply for each invoice in the GSTR-1 while reporting the outward supply.

G2. Without prejudice to the aforesaid, even if the transaction is made taxable in GST, the place of supply, in accordance with section 10(1)(a) or 10(1)(e) of IGST Act, 2017, is outside India. There is no mechanism in the GST returns to report the transaction in GSTR-1 mentioning the place of supply to be a place outside India while levying IGST on the same.

G3. Accordingly, the collection mechanism of such IGST is unclear and consequently it is unclear as to whether only Central Government or both Central and State Government would receive this revenue.

G4. In the absence of ambiguity around collection mechanism and revenue sharing of such GST, it appears that intention of legislatures was never to levy and collect IGST on such type of transaction.

H. **The transaction was not taxable under erstwhile indirect tax laws and hence, the same should not be liable to GST**

H1. GST has been introduced with a view to subsume majority of indirect taxes applicable in India like service tax, central excise, entry tax, VAT, CST etc. The intention of the legislator has not been to tax the transactions which were not taxed under existing laws but to have a uniform tax regime throughout the country.

H2. For the transaction under consideration, no tax was leviable under Customs Act, 1962, Central Excise Act, 1944, Central Sales Tax Act, 1956 and other State VAT laws prior to implementation of GST in India.

H3. As per Article 286 of Constitution of India, the States were not empowered to levy tax on sale or purchase of goods which was carried outside the State or in the course of import or export of goods. Further, vide 101st Constitution (Amendment) Act, 2016, the Article 286 was amended to bring the same in line with provisions of GST law. Also, that Parliament is empowered to formulate the principles to determine is said to be made outside the State or in the course of import or export. However, no such principles have been formulated till date for GST.

H4. The levying section 6 of CST Act provided that CST shall be levied on all inter-State sale of goods. Similar to GST, CST Act specifically defined inter-State supplies, sale in the course of import, sale in the course of export and intra-State sale out of which only inter-State sale was made liable to CST.

H5. Section 5 of CST Act, 1956 provided for the principles to determine whether the transaction is a sale or purchase in the course of import or export and the same are reproduced below:



"(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3)

(4)

(5)

H6. From the above, it can be understood that even under CST Act, similar type of transaction was not liable to CST. Since, the transaction of sale/ supply was not taxable under erstwhile Indirect Tax laws, the GST should not be payable on the said transaction. The intention behind introduction of GST was to bring uniformity in tax laws keeping the taxability principles as is. Hence Applicant pleads that such transaction should also not be made liable to tax under GST regime.

I. The said transaction is kept outside the purview of United Kingdom VAT Legislation

I1. Value Added Tax (VAT) was introduced in the UK on April 1, 1973. Although Value Added Tax Act 1994 (VATA) provides the main framework of the tax, the detailed interpretation of the same are found in statutory instruments either in the form of Orders made by Treasury or Regulations made by Her Majesty's Revenue and Customs (HMRC). HMRC has published several Notices and Leaflets affecting law. Though these Notices are not part of the law but they clarify HMRC's interpretation of the law.

I2. The Applicant would like to draw your attention to the VAT provisions laid in United Kingdom as regards out to out supplies. Following is the extract of such germane provisions:

Section 4(1) of VATA: Scope of VAT on taxable supplies

VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

Section 7(2) of VATA: Place of supply

Subject to the following provisions of this section, if the supply of any goods does not involve their removal from or to the United Kingdom they shall be treated as supplied in the United Kingdom if they are in the United Kingdom and otherwise shall be treated as supplied outside the United Kingdom.

... Emphasis supplied

I3. Based on the above provisions, it could be inferred that for a transaction to be within the scope of UK VAT, following 4 conditions needs to be satisfied:

- It is a supply of goods or services

- It takes place in the UK

- It is made by a taxable person

- It is made in the course or furtherance of any business carried on by that person

Further with reference to section 7(2) of VATA, place of supply for any sale on high seas where the goods do not come to the UK and supplied & delivered to a country other than the UK, would be outside the UK.

I4. Applying the above analogy to the present scenario, it can be observed that the place of supply for the transaction under consideration would be outside the UK and accordingly would not fall under the ambit of supply defined under UK VATA.

J. If at all tax is applicable on the transaction, then input tax credit of the same should be available to the recipient of supply

J1. One of the major objective of introducing GST in India was to allow the seamless flow of credit to the trade and industry to make the Indian business and Indian products cost effective and competitive in the international market.

J2. It is pertinent to note that provisions of section 16 of CGST Act, 2017 read with section 20 of IGST Act, 2017, input tax credit of all the goods and/ or services may be available to the registered person. Further, section 16 of CGST Act, 2017 lays down various conditions for a person to become eligible to avail input tax credit which interalia include receipt of goods and/ or services.

J3. The relevant provisions of section 16 of CGST Act, 2017 is reproduced below:

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both. Explanation. For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply, and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon



within a eligibility and conditions for taking input tax credit period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- J4. Without prejudice to the aforesaid submission, if at all tax is payable on the transaction under consideration then the recipient of supply should be eligible to avail input tax credit of the supply made to him and the condition of receipt should be deemed to have been complied with by applying explanation to section 16(2)(b) of CGST Act, 2017.
- J5. The Applicant contends that if a transaction is held to be liable qua the supplier and not the goods or services or both, then in the same analogy on the very transaction, the credit of input tax needs to be allowed based on the recipient and not whether the goods or services or both had been received or not.
- J6. If the transaction is deemed to be an inter-state supply and if the same is made liable to GST then it should be deemed that such goods have been received from recipient's perspective and the credit should accordingly, be made available to him.
- J7. Further, in order to achieve the objective of introduction of GST, the seamless flow of credit should be maintained and the recipient of goods should be made eligible to avail the input tax credit.
- J8. Also, if the input tax credit is denied the domestic products may become expensive and that may have implications on 'Make in India' initiative of Government of India and State Governments as well.

CONCLUSION

- In view of the above submissions, the transaction of sale/ supply of goods by the supplier in India should not be made liable to IGST under section 7(5)(a) of GST Act, 2017 since, the intention behind section 7(5)(a) was to specifically provide that export or import of goods and/ or services should be treated as inter-state transaction and not to tax the transactions under consideration.
- If at all the transaction is made taxable, the recipient should be eligible to avail the input tax credit.

In addition to submissions made earlier, applicant also intends to submit the following:

Recent rulings laid by the Hon'ble Authority of Advance Ruling

A.1 Under the recent ruling of the Hon'ble Authority of Advance Ruling of Maharashtra in case of BASF India Limited (Annexure 1), it was observed that the goods which are sold on high seas sale basis are non-taxable supply as no tax is leviable on them till the time of customs clearance in accordance with and compliance of section 12 of the Customs Act, 1962 and section 3 of Customs Tariff Act, 1975. Further the authorities were of the view that the tax position on the said transaction was also confirmed under circular no 3/1/2018 - IGST dated 25.5.2018 issued by Central Board of Indirect Taxes and Customs (Annexure 2).

Under the said circular, a clarity was provided as regards to tax implication on clearance of warehouse goods for home consumption. Based on the same, it was clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry. Accordingly, IGST liability would be levied and collected only once, i.e at the time when the warehoused goods are cleared from the customs bonded warehouse.

A.3. The relevant para of the circular is reproduced below -

6. It is therefore, clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

...(Emphasis provided)

- A.4.** Drawing analogy from abovementioned circular Hon. Advance Ruling Authority has held such supply would get covered under the definition of 'non-taxable supply' as per section 2(78) of CGST Act, 2017 which means a supply of goods or services or both which is not leviable to tax under this Act.
- A.5.** Given the aforesaid, the applicant hereby submits that no GST can be levied on any supply till goods customs frontiers of India. Accordingly, no GST on supply of goods would be applicable when supply involves movement of goods from a place outside India to another place outside India wherein such goods never cross customs frontiers of India.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

In Annexure-2 the applicant has given brief background of the transaction. In para-3 it is mentioned that it has been mutually agreed between all entities of this group that any requirement of supply of goods (paints) within country where Jotun group entity is present would be served by that particular entity. Consequently in case where the applicant gets an order from Indian customer to supply paints to sheep located near Norway, entity of Jotun group

located at Norway would be serving the said order by supplying paints to that ship & thereafter raising an invoice on the applicant in this regard.

Going by the principle of mutual agreement as said in the above paragraph it is not clear why Jotun Norway is not raising the invoice

In Annexure-3 the applicant has quoted relevant provisions of law. He has said that IGST cannot be extended beyond the territorial jurisdiction of the said legislation. He has quoted Section 7(5) of IGST Act, 2017. Emphasis in this provision is given on supplier located in India and place of such supply is outside of India would be considered as interstate supply. The applicant has taken the reference of term 'Supplier'. But if we go through the Section 20 of IGST Act, 2017 it doesn't covers definition of Supplier. The applicant has taken the reference of Section 10 of IGST Act, 2017. In the specific type of transaction mentioned in the application the applicant is challenging the jurisdiction of levy of IGST by taking reference of Section 2(56) of CGST Act, 2017 read with Section 2(24) IGST Act, 2017. The applicant contends that the provisions of GST are travelling beyond its power by stating that for the transaction under question where the goods are laying out side of India i.e. in Norway. The place of supply shall be outside India. But Section 7(5) (a) of IGST Act, 2017 is self-explanatory an IGST on this transaction will be applicable.

The applicant has also taken several references of constitutional provisions. The applicant says that interstate sale is not defined in constitution so natural meaning should be taken but in the IGST Act, 2017 the definition of interstate sale is given. The applicant says that Government has no power to formulate what is interstate transaction but it is self-explanatory in article 269-A-5 that Government has powers. The question doesn't arise whether the state Government has the power to levy respective GST on intra state or interstate rather the question is whether the transaction would be liable for IGST. Applicant request to exclude such transaction from the purview of the state government cannot be accepted and is out of the purview of advance ruling.

The applicant has referred zero rated supply and is trying to relate this peculiar transaction to zero rated supply. The applicant request to extend the meaning of export to cases where goods are delivered to customer outside India. Simultaneously the applicant is also agreeing that this transaction cannot be treated as zero rated supply.

The applicant request to apply the principle of Service tax legislation can not be accepted because the provisions of IGST Act are self-explanatory. The applicant has also referred circular no 33/2017 of Custom dated August 2017. In this circular high seas transaction and corresponding imports in the Custom frontiers of India is explained. The circular doesn't speak anything wrt Section 7(5) (a) of IGST Act, 2017. As the goods are not cleared through Custom frontiers of India the same will not be applicable.

The applicant has raised the issue that there is no provision in GSTR-1 and GSTR2 and thus therefore the collection mechanism of such IGST is unclear and consequently it is unclear as whether only central government or both center and state government would receive this revenue. Merely there is no provision in the return doesn't mean that the intention of legislation was not levy IGST.

The applicant has said that if IGST is applicable the recipient should be eligible for set off. Yes the recipient will be eligible for ITC.

Thus the answer for the question raised in advance ruling are as follows:

- a) IGST will be applicable on the peculiar nature of transaction mentioned in the application.
- b) ITC will be available to the recipient and recipient can be entitled to Input Tax Credit if you satisfy the below-mentioned conditions.
 - 1) You must be registered as a taxable person under GST.
 - 2) Goods & services on which you want to claim ITC should have been used only for business purposes.
 - 3) Input Tax Credit can be claimed on taxable & zero-rated supplies (exports).
 - 4) If the constitution of registered taxable person changes due to sale, merger or transfer of business, then unused ITC shall be transferred to the sold, merged or transferred business.
 - 5) To claim ITC, you need supporting documents like tax invoice, debit note, supplementary invoice, etc.
 - 6) You can claim Input Tax Credit if you have actually received some goods & services.
 - 7) To claim ITC, the Input Tax must be paid through electronic cash ledger or electronic credit ledger.
 - 8) It is mandatory to file all the applicable GST returns.
 - 9) For goods which are received in lots, you can claim ITC only after you have received the final lot.

04. HEARING

The case was scheduled for 27.06.2018 for Preliminary hearing but At the request of Sh. Nitin S. Shah, Advocate , who was having another hearing on 26.06.2018 the Preliminary hearing was preponed and held on dt. 26.06.2018 with respect to admission or rejection of present application and Sh. Nitin S. Shah, Advocate duly authorized appeared and requested for admission of application as per details in their application. During hearing Jurisdictional Officer was not present.

The application was admitted and called for final hearing on 24.07.2018, Sh. Nitin Shah, Advocate appeared and made oral and written submissions. The Jurisdictional Officer, Sh. Rajesh Gaikwad Dy. Commr. Of S.T. (E-607), large Tax Unit -II, Mumbai also appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by the applicant. The issue put before us is in respect of a transaction which is/would be is on the lines thus –

1. The applicant receives an order for paints from a customer located in taxable territory i.e. India. to supply goods (paint) as a new building , dry dock supply or sea dock supply.
2. The goods have to be delivered to the customer's ship/vessel located near Norway i.e. a place outside taxable territory.
3. Further, the applicant, as per their group policy, places back to back purchase order on their related party, M/s Jotun, Norway (JN) since JN is located nearest to the location of such ship/ vessel of the customer.
4. As per the directions of the applicant the said goods available at that location of JN, would be moved to the destination i.e. place of vessel / ship of the customer outside taxable territory.
5. Thereafter JN would raise an invoice on the applicant transferring the ownership of the goods to the applicant pursuant to which, the applicant would be raising an invoice on their customer located in taxable territory, thereby ultimately transferring the ownership to the Customer.

In view of the above situation, the applicant has raised the following questions:-

- a) *Whether the supply of goods which are moved from a place located outside taxable territory and are delivered at a place outside taxable territory, would be liable to tax in India under section 7(5)(a) of IGST Act?*
- b) *If answer to (a) is yes, whether the recipient of the goods i.e. person liable to pay consideration, be eligible to avail the input tax credit of the said goods?*

In this connection among the various submissions made by the applicant, they have also contended that :-

- i. The levy of IGST on said transaction mentioned above would be ultra vires the IGST Act.
- ii. It is outside the jurisdictional powers of the GST law to determine the place of supply for goods when such goods are not located in India.
- iii. The provisions of section 7(5)(a) of the IGST Act, 2018, are ultra vires the Constitution of India law (reasons mentioned in their submissions).

We do not feel the need to discuss the above aspects (i) to (iii) since the same is not within the purview and scope of Advance Ruling as per the provisions of the CGST Act, 2018 and the SGST Act, 2018.

In view of the submissions made by the applicant we find that it is clear that the applicant would be purchasing goods from Jotun Norway on the basis of purchase orders received from their customer in India and the said goods would be delivered by JN from their Norway place to the ship/vessel of the customer which is also in non-taxable territory i.e. outside India. The order received by the applicant from their customer in India and the order placed to Jotun, Norway are back to back orders. Thus it is seen that the goods are delivered by JN from a place outside the taxable territory of India to the customer's vessel which is also outside the taxable territory of India. This transaction is similar to selling of goods on High Seas Sale since in both the cases the goods purchased do not cross the customs frontiers of India.

In view of the above facts we would be required to refer to the provisions of IGST Act, 2017. First of all to confirm the nature of supply of present goods i.e. whether inter-state or intra-state we are required to refer to Chapter IV of the IGST ACT, 2017, which reads as under:-

CHAPTER IV DETERMINATION OF NATURE OF SUPPLY

Inter-State supply

7. (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.

Intra-State supply

8. (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:-

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

We find that Section 7(2) of the IGST Act reads as under:-

"Section 7(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"

Thus it is very clear that supply of goods imported into the territory of India till they cross the customs frontier shall be treated as supply of goods in the course of inter-state trade or commerce.

From the proposed transactions placed by the applicant before us there is no doubt that the goods of the applicant would be imported goods if they are brought from outside the country into India and it is clear that when the said goods are delivered/supplied from a place outside India to a place outside India, these goods have not crossed the customs frontiers of India Thus clearly the transaction in these goods are in the nature of inter-state supply as per Section 7(2) of the IGST Act.

Now when we are clear that the subject transaction in question is in the nature of inter-state sales, the liability to tax in respect of these goods would be as per Section 5 of the IGST Act which reads as under

CHAPTER III LEVY AND COLLECTION OF TAX

Levy and collection

5. (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)
- (3)
- (4)

(5)

We find that proviso to Section 5(1) of the IGST Act states that "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 Ad at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962".

Thus from the above it is clear that integrated tax on goods imported into India is to be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 and Section 12 of the Customs Act, 1962 and the same is to be levied and collected at the time of import into India. The goods are considered to be imported into India only after they clear the customs frontier after compliance of applicable procedures and payment of duty as applicable.

Thus as per Section 7(2) of the IGST Act and proviso to Section 5(1) of the IGST Act it is very clear that in respect of import goods there is no levy and collection except in accordance with the provisions of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975. Section 12 of the Customs Act, 1962 provides that custom duties which includes integrated tax in respect of imported goods would be levied only at the time of import or export of goods.

Thus in case of goods supplied on an out an out basis as is in the present case, there is no levy till the time of their customs clearance in compliance with Section 12 of the Customs Act and Section 3 of the Customs Tariff Act. In view of this the import goods sold from and to a non-taxable territory, though they are clearly in the nature of inter-state supply would come in the category of "exempt supply" as no duty is leviable on them except in accordance with proviso to Section 5(1) of the IGST Act.

We find that in the definition of exempt supply as given in Section 2(47) of the CGST Act is as under:-

Section 2(47) of the Central Goods and Services Tax (CGST) Act, 2017, "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be "wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply".

Further we find that Section 2(78) of the CGST Act defines non-taxable supply which is as under:- "As per Section 2(78) of the Central Goods and Services Tax (CGST) Act, 2017, "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act".

Thus it is very clear that the goods sold in the subject transaction are non-taxable supply as no tax is leviable on them till the time of customs clearance in accordance with and compliance of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff act, 1975.

We find that the above legal position is further reiterated and confirmed by Circular No. 3/1/2018 - IGST dated 25.05.2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing.

05. 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- 24/2018-19/B-

75

Mumbai, dt.

28/07/2018

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

Question :- a) Whether the supply of goods which are moved from a place located outside taxable territory and are delivered at a place outside taxable territory, would be liable to tax in India under section 7(5)(a) of IGST Act?

Answer :- Answered in the negative.

Question :- b) If answer to (a) is yes, whether the recipient of the goods i.e. person liable to pay consideration, be eligible to avail the input tax credit of the said goods?

Answer :- Not relevant in view of answer to Question No. 1 above.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax. Churchagte
5. Joint commissioner of State tax , Mahavikas for Website.


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