AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.207, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI -600 006.

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai-600 034.	Smt. A. Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.

ADVANCE RULING NO. 116/AAR/2023 – RECTIFICATION OF MISTAKE
DATED: 24.07.2024

GSTIN Number, if any / User id	33AAGCM7782A1ZK
Legal Name of Applicant	Mitsubishi Electric India Private Limited
Registered Address / Address provided while obtaining user id	Isana Katima, Door No.497 and 498, 3rd floor, Poonamallee High Road, Aurambakkam, Chennai, Tamil Nadu – 600 106
Details of Application	GST ARA – 01 Application Sl.No.02/2023 dated 19.01.2023
Represented by	1. Mr. Deepak Suneja, Advocate 2. Mr. Mahesh Kumar, Senior Manager
Concerned Officer Jurisdictional Officer	**State** : Arumbakkam Assessment Circle **Centre** : Chennai Outer Commissionerate; Gummidipoondi Division.

PROCEEDINGS UNDER SECTION 102 OF THE CGST ACT, 2017 AND UNDER SECTION 102 OF THE TNGST ACT, 2017.

Mr. Gurvinder Singh Gandhi, Chief Financial Officer, M/s. Mitsubishi Electric India (P) Ltd., Isana Katima, Door No.497 and 498, 3rd floor, Poonamallee High Road, Aurambakkam, Chennai, having GSTIN 33AAGCM7782A1ZK, has filed an application dated 14.03.2024, for rectification of mistake (ROM) under Section 161 of the CGST Act, 2017, against the ruling passed by this authority vide Advance Ruling No.116/AAR/2023 dated 22.11.2023.

2. The applicant has filed the instant application for alleged rectification of certain errors that were apparent on the face of the Order, and under the said application, the applicant has stated as below :-

*"**ERRORS APPARENT ON THE FACE OF RECORD***

9. In this respect, it is stated that no opinion has been expressed on the following questions on which Advance Ruling has been sought:

a. Whether the Company is eligible to avail the input tax credit ('ITC') of integrated tax ('IGST") paid as part of differential Customs duty for imports made during the relevant period in terms of the timeline prescribed under Section 16(4) of the CGST Act?

b. Whether documents evidencing payment can be considered as a valid duty paying document for the purpose of availing ITC of the IGST paid as part of differential Customs duty paid during the relevant period, in terms of Section 16(2) of the CGST Act, 2017 read with rule 36(3) of CGST Rules, 2017?

10. The Ld. Authority has only expressed opinion on the question "Whether the provisions prescribed under the Goods and Services Tax ('GST) law imposes any restriction on availment of ITC of the differential IGST paid post on-site audit by Customs". The Ld. Authority has stated that Section 129 and Section 130 of the CGST Act is not applicable in the instant case and Section 74 is applicable since the Applicant has made payment of penalty @ 15%. Based on this, the input tax credit ('ITC') of differential Integrated tax ('IGST") discharged by the Applicant should not be eligible.

The said Paras of the OIO have been reproduced for ease of reference:

8.4.3 It may be noted here that though serving of a notice on the person chargeable with tax not paid or short paid is a requirement under the said provisions, a window has been provided to the taxpayers whereby they could avoid service of notice to them, if they come forward to pay the tax along with appropriate interest and a penalty equivalent to fifteen percent of such tax, as laid down under sub-sections (5) and (6) to Section 74 of the CGST Act, 2017.

.....

8.10 Further, it could be seen that under the demanding provisions of CGST/TNGST Acts, 2017, except for the provisions of Section 74(5), penalty under fifteen percent could not be found elsewhere under the said legal provisions. In the instant case, the fact that a penalty at 15% has been paid on the tax amount determined by the audit officers, goes to prove that the differential tax has been determined under the provisions of 74(5) of the CGST/TNGST Act, 2017, which in turn involves determination of tax by reason of wilful-misstatement or suppression of facts.

8.12 Accordingly, from the submissions made by the applicant and from the documents available on file, it becomes clear that the instant case has to be construed as a case of determination of tax by reason of willful-misstatement to evade tax, in spite of the fact that no show cause notice was issued, or no order was passed in the instant case. Under these circumstances, the differential IGST paid by the applicant does not become eligible for availment of ITC as laid down under Section 17(5) of the CGST/TNGST Act, 2017."

11. Based on the above, the Ld. Authority has stated that since the basic issue involving the availment of ITC on the differential tax paid is found to be inadmissible, they have refrained from giving any ruling on the remaining two questions, relating to the time limit prescribed and the documents evidencing payment to be considered as a valid duty paying documents.

12. The Applicant also wishes to file appeal against the OIO on the third question which has been answered in negative, however, since the Ld. Authority has refrained from answering the remaining two questions, the Ld. Authority will also not entertain or prefer to answer such questions in appeal. This will absolve the purpose of filing of appeal by the Applicant against the OIO since an appeal only against the third question will itself defeat the entire purpose. Therefore, it is important for the Applicant to first file the rectification application to obtain answer on the two questions before an appeal can be preferred to the Ld. Appellate Authority."

PERSONAL HEARING

3.1 Mr. Deepak Suneja, Advocate and Mr. Mahesh Kumar, Senior Manager, M/s.Mitsubishi Electric India (P) Ltd., appeared as authorized representatives (AR) for the personal hearing held on 28.05.2024.

3.2 The AR explained that the instant application is for rectification of errors apparent on the Advance Ruling Order No.116/AAR/2023 dated 22.11.2023 passed by the Authority for Advance Ruling, Tamilnadu (AAR). The AR contended that having admitted the application in the first place, the AAR ought to have passed rulings in respect of all the three queries raised by the applicant. During the personal hearing, the AR furnished a synopsis cum paperbook that contained the relevant legal provisions and judgements in support of their stand. The AR stated that apart from the same, there were apparent errors on facts in paras 7.2, 8.7 and 8.10, and to this effect, they would be furnishing additional written submissions in a couple of days' time.

3.3 The AR therefore requested that the two queries raised in the original application, which the AAR refrained from answering, may be answered, thereby rectifying the apparent error on the face of the impugned Advance Ruling.

3.4 As undertaken by them, the AR furnished their additional submissions vide letter dated 29.05.2024 wherein they stated as follows:-

"Ruling on Q.1 and Q.2 not pronounced by the AAR in the order

3. *It is reiterated that, in the order, rulings on question No. 1 and 2 was not pronounced. In this regard, it is submitted that Rectification of Mistake can be done to pronounce order on questions that have remained unanswered. Reliance in this regard is placed on the order of the jurisdictional Hon'ble Tamil Nadu AAAR in re The Erode City Municipal Corporation dated 12 January 2023 [A.R. Appeal No. 09/2021/AAAR-ROE, Tamil Nadu], wherein the Hon'ble AAAR had accepted that out of the 13 activities on which ruling was sought, ruling was not pronounced on S. No. 10, 11 and 12. Accepting this as a case for rectification, the Hon'ble AAAR had pronounced the ruling on left out questions [Para 7]. Copy of the ruling is enclosed with these submissions.*

4. *Further, the AAAR in case of* ***Bhartiya Reserve Bank Note Mudran Private Limited, 2022 (7) TMI 443 – AAAR*** *has clearly held that the AAR should answer all questions which have been posed before it and AAAR cannot answer any questions which have not been posed before it.*

5. *To the similar effect are the judgments in* ***ACIT v. Saurashtra Kutch Stock Exchange Ltd, 2010 (18) S.T.R. 84 (S.C.)*** *and* ***Baroda Rayon Corporation Limited v. UOI, 2006 (199) ELT 794 (Guj.)****. The copies of these judgments were supplied in the submissions submitted during the hearing.*

6. *We also humbly submit that there is no power to remand under Section 101 of the CGST Act. The AAAR is only permitted to confirm or modify the order of AAR, and not remand the case back to AAR. Hence, it becomes critical that all questions are answered so that we can appropriately approach AAAR, if needed.*

Errors in respect of Q.3

7. *Additionally, with respect to Question No. 3 as to availability of Input Tax Credit of the differential IGST paid post on-site customs audit, following errors are apparent, which should be correct, and consequent effect should be given.*

Import IGST is duty of customs under the Customs Act not a levy under IGST Act

8. *At Para 7.2 of the order, the AAR correctly observed as under:*

   "After discussions with the Customs authorities, the applicant made payment of ***differential customs duty*** *as applicable during the relevant period, The said payment has been made by the Company during the year 2022 vide* ***demand drafts****".*

9. *Further, a perusal of TR-6 Challan (page 24 of the original application) shows* ***"Major Head '0037'-Customs Duties"*** *and the Demand Draft (page 26 of the original application) shows* ***"Customs Duty A/c PNB...."****.*

10. *However, at Para 8.7 of the Order, the AAR has mentioned* ***"the differential IGST payable gets covered under the Integrated Goods and Services Tax Act, 2017"****.*

11. *Further from the judgment in* ***Hyderabad Industries v. UOI [1999 (108) E.L.T. 321 (S.C.)]*** *– para 14, the Constitution Bench of Supreme Court has held that additional customs duty is leviable under the Customs Tariff Act, 1975. Hence, it is clear that the import IGST is covered under the Customs Act. Any ruling pronounced against the settled Supreme Court jurisprudence is a fit case for rectification.*

12. *In view of the above, the error at para 8.7 should be rectified. Further, because of the rectification in error, the differential IGST paid under the Customs Act does not attract the provisions of Section 17 (5)(i) and accordingly the credit should be admissible to the Applicant.*

15% penalty is not paid under Section 74 of the IGST Act, but under Section 28 of the Customs Act

13. *Furthermore at para 8.10 of the order, it was observed that "except for the provisions of Section 74(5), penalty under fifteen percent could not be found under the said legal provisions".*

14. *In this regard, the Applicant again reiterates that the amount was paid under the Customs Act, and* ***even under Section 28(5) of the Customs Act, fifteen percent of penalty is prescribed*** *along with customs duty payable thereunder. Therefore the observation at Para 8.10 is erroneous in as much as it*

has been traced to Section 74 (5) and mentions that fifteen percent penalty is not present in any other provision.

15. *In view of the above, the error at para 8.10 should be rectified. Further, because of the rectification in error, the differential IGST paid under the Customs Act does not attract the provisions of Section 17 (5)(i) and accordingly the credit should be admissible to the Applicant.*

Prayer

16. *In view of the above, the Applicant prays that the order should be rectified, as above. Further the Applicant prays for the consequent effect of allowing of ITC on the differential IGST paid by the Applicant."*

DISCUSSION AND ANALYSIS

4.1 We have carefully considered the submissions made by the applicant in the application for rectification of mistake (ROM), and the additional submissions made during the personal hearing. It is seen that the applicant has filed the application dated 14.03.2024 for ROM under Section 161 of CGST Act, 2017.

4.2 In this regard, it is seen that in so far as it relates to cases of 'Advance Ruling', the legal provisions relating to 'application for advance ruling', Appeal to Appellate Authority', Rectification of advance ruling', 'Applicability of advance ruling', etc., are provided under Sections 95 to 106 in 'Chapter XVII' of the CGST/TNGST Acts, 2017. The Section 102 relates specifically to 'Rectification of Advance Ruling', which reads as below :-

"102. Rectification of advance ruling.— The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or section 101C, respectively, so as to rectify ***any error*** *apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:*

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard."

4.3 We would like to make it clear that when Section 102 of the CGST Act, 2017, falling under **'Chapter XVII – Advance Ruling'** specifically relates to 'Rectification of Advance Ruling', in order to rectify any error apparent on the face of the record, reference to Section 161 of the CGST Act, 2017 for this purpose is incorrect, and so the provisions of Section 161 are not applicable to the instant case.

4.4.1 Moving on to the issue in hand, the applicant claims that in the impugned order, rulings on question No. 1 and 2 was not pronounced, and that Rectification of Mistake can be done to pronounce order on questions that have remained unanswered. They have placed reliance in this regard on the order dated 12 January 2023 [A.R. Appeal No. 09/2021/AAAR-ROE, Tamil Nadu] of the jurisdictional

Hon'ble Tamil Nadu AAAR in the case of Erode City Municipal Corporation, wherein the Hon'ble AAAR had accepted that out of the 13 activities on which ruling was sought, ruling was not pronounced on S. No. 10, 11 and 12. Accepting this as a case for rectification, the Hon'ble AAAR had pronounced the ruling on left out questions.

4.4.2 In this regard, it is to be noted that primarily the idea behind rectification of advance ruling as provided under Section 102 of the CGST Act, 2017, is to rectify any error apparent on the face of the record, if a request is made within a period of six months from the date of the order. On the other hand, when an applicant is aggrieved by any advance ruling pronounced, the remedy of appeal is very much available under Section 100 of the CGST Act, 2017, that runs as below :-

> *"100. Appeal to Appellate Authority.— (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.*
>
> *(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:*
>
> *Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.*
>
> *(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed."*

4.4.3 From the above, it could be seen that when a question raised by the applicant has not been answered in the Advance Ruling or the Appellate Order erroneously or due to oversight without assigning any reasons thereof, it becomes a case fit for rectification of error under Section 102 of the CGST Act, 2017. Whereas, when an Authority for Advance Ruling or an Appellate Authority for Advance Ruling has refrained from answering any question or questions, citing reasons for the same, it becomes a reasoned Ruling/Order, and it cannot be seen as a mistake or an error meant for rectification under Section 102 of the CGST Act, 2017. It is clear that in such cases, only the remedy of appeal under Section 100 of the CGST Act, 2017, lies with the applicant in respect of the advance ruling/order against which they feel aggrieved. Therefore, in the instant case, the applicant ought to have filed an appeal within the timeframe prescribed therein, especially when they are questioning the legality and correctness of the ruling pronounced.

4.5.1 In this regard, it is seen that the applicant has placed reliance on the order of the jurisdictional Hon'ble Tamil Nadu AAAR in the case of M/s.Erode City Municipal Corporation dated 12 January 2023 [A.R. Appeal No. 09/2021/AAAR-ROE, Tamil Nadu], wherein the Hon'ble AAAR had accepted that out of the 13 activities on which ruling was sought, ruling was not pronounced on S. No. 10, 11 and 12. Accepting this as a case for rectification, the Hon'ble AAAR had pronounced the ruling on left out questions. In this regard, it becomes imperative to point out that advance rulings are applicant-specific and it applies only to the applicant who had sought it.

However, the persuasive value that it brings to the issue in hand needs to be considered, and accordingly the same is taken up for discussion.

4.5.2 On perusal of the said Order, it is seen that the same is a fallout of the advance ruling passed originally vide Order No.14/ARA/2021 dated 28.04.2021 by the Authority for Advance Ruling, Tamilnadu (AAR), and the relevant appellate order (on being appealed against) vide Order-in-Appeal No.AAAR/20/2021 (AR) dated 01.12.2021 passed by the Appellate Authority for Advance Ruling, Tamilnadu (AAAR). As seen from the ruling of the AAR referred above, it is seen that M/s. Erode City Municipal Corporation has listed 16 activities and had sought ruling under five different questions involving one or the other activity, as below :-

> *"Q.1 Advance Ruling is required in respect of Sl.No.1 to 6, 8, **9 & 13** as to whether the services rendered by them directly are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted under the Notification No. mentioned against each Sl.No.*
>
> *Q.2 In respect of services rendered by them from Sl.No.1 **to 13** through tender contractors whether they are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted under the Notification No. mentioned against each Sl.No.*
>
> *Q.3 In respect of Sl.No.**14** they are collecting ----------*
>
> *Q.4 In respect of Sl.No.**15** with effect from 25.01.2018 ----------*
>
> *Q.5 In respect of Sl.No.**16** the renting of ----------"*

Accordingly, the AAR had pronounced the decision in respect of Sl.Nos 1 to 13, except Sl.Nos. 7, 10, 11 and 12 in relation to question No.1, and had not answered the question No.2, as the same were undertaken by the contractors and not by the applicant concerned. On being appealed against, the AAAR while pronouncing the decision in respect of question No.2, begins as follows :- *"In respect of Q.No.2, the transaction between the corporation and the contractor as listed in **Sl.No.1 to 9 and 13**, except at Sl.No.5A ------."*

4.5.3 Accordingly, the Order dated 12.01.2023 for rectification of error passed by the AAAR vide A.R. Appeal No. 09/2021/AAAR-ROE, sets right the error/lapse by way of rendering decisions in respect of Sl.Nos.10, 11 and 12. While doing so, the Appellate Authority has also explained the reasons in detail in paras 7 to 10 of the said order, as to why the lapse in not answering the said queries has occurred, and as to why the same are required to be answered. Under these circumstances, it becomes clear that the confusion owing to the enormity of the activities involved and the complexity of the questions framed, has led to the said error in the initial stages of passing the orders on advance ruling. This was also due to the fact that each question was with reference to activities specified therein, but different from each other, and also due to the fact that the clarification was sought on two or more grounds per activity. We therefore feel that such cases are fit to be applied for 'rectification of error', as it is obviously an error/mistake on the part of the authority passing the order. We further notice that the questions on which ruling was sought in the above referred case are not in relation to one another and are independent.

4.5.4 On the other hand, the queries raised in the instant case of the appellant as reproduced below are dependent and related to each other, viz.,

> *a. Whether the Company is eligible to avail the input tax credit ('ITC') of integrated tax ('IGST') paid as part of differential Customs duty for imports made during FY 2018-19, FY 2019-20 and FY 2020-21 (hereinafter referred to as "relevant period"), in terms of the timeline prescribed under Section 16(4) of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017')?*
> *b. Whether documents evidencing payment can be considered as a valid duty paying document for the purpose of availing ITC of the IGST paid as part of differential Customs duty paid during the relevant period, in terms of Section 16(2) of the CGST Act, 2017 read with rule 36(3) of CGST Rules, 2017?*
> *c. Whether the provisions prescribed under the Goods and Services Tax ('GST') law imposes any restriction on availment of ITC of the differential IGST paid post on-site audit by Customs authorities?*

That is to say, the queries at clause (a) and (b) are related to the query at clause (c), which is the main query of significance in the instant case and that they do not survive once query (c) is answered in negative. Further, it could be seen that only the query (c) seeks answer on the 'admissibility of input tax credit of tax paid or deemed to have been paid' whereas the other two queries at clauses (a) and (b) are a corollary to the main query, are general in nature, seeking clarification on procedural aspects, and dependent on the outcome of the main query at clause (c).

4.5.5 In this regard, it may be seen that as per Section 95(a) of the CGST Act, 2017,

> *(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*

whereby it is made clear that a decision is to be provided by the Authority on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. We find that in the instant case, the moot question to be answered is the admissibility of ITC of the differential IGST paid post on-site audit by Customs authorities, which is in relation to the activity undertaken or proposed to be undertaken by the applicant. Accordingly, the other questions as to whether the applicant is eligible to avail the ITC in terms of the timeline prescribed under Section 16(4) of the CGST Act, 2017, and whether the documents evidencing payment can be considered as valid documents for availing ITC in terms of Section 16(2) of the CGST Act, 2017 read with rule 36(3) of CGST Rules, 2017, would be rendered redundant, once the main question is answered in negative. Further, we are of the opinion that even in the event of answering the main query in clause (c) in the affirmative, the other two questions at clauses (a) and (b) need not be answered, as the Authority for Advance Ruling is not required to provide clarifications on procedures that are already prescribed under the statute, or under the Notifications issued. It could be seen that

as laid down under Section 97(2) of the CGST Act, 2017, the Authority for Advance Ruling is required to provide answer only in respect of the following questions, viz.,

> *(a) classification of any goods or services or both;*
> *(b) applicability of a notification issued under the provisions of this Act;*
> *(c) determination of time and value of supply of goods or services or both;*
> *(d) **admissibility of input tax credit of tax paid or deemed to have been paid;***
> *(e) determination of the liability to pay tax on any goods or services or both;*
> *(f) whether applicant is required to be registered;*
> *(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

4.5.6 We note that the appellant has also placed reliance on the case of M/s.Bhartiya Reserve Bank Note Mudran Private Limited, 2022 (7) TMI 443 – AAAR in support of their defence. In this case, the Karnataka Appellate Authority for Advance Ruling in its Order No.KAR/AAAR/03/2022 dated 06.07.2022, states that once the advance ruling application is admitted, the questions are liable to be answered. However, on a careful perusal of the said order, it is seen that only in respect of the first question, which has not been answered initially by the Authority for Advance Ruling, does it convey that the said question falls well within the scope of Section 97(2)(d) since the admissibility of ITC on common input services are to be examined. However, as far as the second and third questions are concerned, the Appellate Authority for Advance Ruling, Karnataka has observed in paras 15 and 16 of the said order that they agree with the lower authority that no ruling can be given. Especially, para 15 of the said order which is reproduced below for reference dwells on the procedural aspect as in the instant case, i.e.,

> *"15. Coming to the second question, "Whether the method followed in connection with claiming of ITC is in accordance with the provisions of law", we find that this question is not within the scope of an advance ruling. **The correctness or otherwise of the method followed by the Appellant in claiming input tax credit is not a subject covered under Section 97(2) of the CGST Act.** Such questions are to be raised before the assessing officer who is the proper officer to decide whether the method adopted by the Appellant in complying with the provisions of Rule 42 of the CGST Rules is correct or not. **We therefore, we agree with the lower authority that no ruling can be given** on the second question.*

4.5.7 It may be noted that in the instant case of the appellant, only the query at clause (c) seeks answer on the **'admissibility of input tax credit of tax paid or deemed to have been paid'** whereas the other two queries at clauses (a) and (b) are a corollary to the main query and dependent on the outcome of the main query at clause (c). Therefore, it is to be understood that all the queries are liable to be admitted in the initial stage of an application being filed, as the decision on the admissibility of ITC can be arrived at, only on examining the records, facts and circumstances of the case and the question of answering the other related queries are dependent on the outcome of the main query.

4.5.8 Notwithstanding the above, it could be seen that paras 8.12 and 8.13 of the Advance Ruling No.116/AAR/2023 dated 22.11.2023 passed in the instant case, reads as :-

> *"8.12 Accordingly, from the submissions made by the applicant and from the documents available on file, it becomes clear that the instant case has to be construed as a case of determination of tax by reason of willful-misstatment to evade tax, in spite of the fact that no show cause notice was issued, or no order was passed in the instant case. Under these circumstances, the differential IGST paid by the applicant does not become eligible for availment of ITC as laid down under Section 17(5) of the CGST/TNGST Act, 2017.*
>
> *8.13 Once the basic issue involving the availment of ITC on the differential tax paid is found to be inadmissible in the instant case, we are of the opinion that the remaining two queries, relating to the time limit prescribed and the documents evidencing payment to be considered as a valid duty paying document, are rendered redundant, as both the queries are in relation to the differential tax paid in the instant case. As a result, it is felt that the question of answering the queries referred at clauses (a) and (b), does not arise."*

Accordingly, when the original ruling has come up with a well-reasoned speaking order in paras 8.12 and 8.13 as above, by no means can this be construed as an error or a mistake requiring rectification. On the other hand, we are of the opinion that the applicant is questioning the legality and correctness of the ruling pronounced which could be made only through an 'Appeal process', as provided under Section 100 of CGST Act, 2017, and we notice that the applicant has failed to make use of the said appeal facility. Therefore, we are of the considered opinion that refraining to answer the queries at clauses (a) and (b) in the instant case, is a conscious decision with a sound reasoning and that it does not require a rectification, as it is not an error or mistake apparent on the face of the record.

4.6.1 Apart from the above, the appellant has contended that the remarks of AAR in para 8.7 of the impugned ruling to the effect that "the differential IGST payable gets covered under the Integrated Goods and Services Tax Act, 2017", is incorrect and that it requires a rectification, as the Constitution Bench of Supreme Court has held in para 14 of the case involving M/s. Hyderabad Industries Vs. UOI [1999 (108) E.L.T. 321 (S.C.)], that additional customs duty is leviable under the Customs Tariff Act, 1975.

4.6.2 It may be noted that with the advent of GST with effect from 1.07.2017,.new enactments have come into force and the provisions of the same are to be applied in the current scenario. Further, the judgement of the Hon'ble Supreme Court passed in the year 1999, as referred above does not apply to the instant case, since various amendments have already been carried out in the Customs law, so as to accommodate the element of GST (IGST on Import of Goods) in it. Precisely, Section 3(7) of the Customs Tariff Act, 1975, which is amended in consonance with the proviso to Section 5(1) of the IGST Act 2017, which deals with import of goods, as it stands now, and the relevant provisions, viz., Section 5(1) of the IGST Act 2017 including the proviso to Section 5(1), are reproduced hereunder for appreciation, i.e.,

Section 5. Levy and collection under IGST Act 2017:-

(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 [other than the goods as may be notified by the Government on the recommendations of the Council] 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.*

Section 3(7) *of the Customs Tariff Act, 1975:-*

*"(7) Any article which is imported into India shall, **in addition, be liable to integrated tax** at such rate, not exceeding forty percent **as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017** on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) [or sub-section (8A), as the case may be].*

Accordingly, it is to be clarified that taxes under IGST Act on import of Goods are required to be levied and collected in addition to the duties of Customs in accordance with Section 3 of the Customs Tariff Act, 1975, whereas the IGST is as is leviable in terms of Section 5 of the IGST Act, 2017, at the point where duties of customs are levied. That is to say, that in terms of Section 2(15) of the Customs Act, 1962, duty means a duty on customs **leviable under the said Customs Act,** whereas vide Section 3(7) of the Customs tariff Act, 1975, in addition to the duties of customs, the IGST on import of goods is **leviable in terms of Section 5 of the IGST Act, 2017**. Therefore, we are of the opinion that no rectification is required in this case, as no error or mistake is noticed in this case.

4.7.1 Finally, the appellant has contended that 15% penalty is not paid under Section 74 of the IGST Act, but under Section 28(5) of the Customs Act. Further, the phrase *"except for the provisions of Section 74(5), penalty under fifteen percent could not be found under the said legal provisions"* at para 8.10 of the order was stated to be erroneous, in as much as it has been traced to Section 74 (5) and mentions that fifteen percent penalty is not present in any other provision. They stated that even under Section 28(5) of the Customs Act, fifteen percent of penalty is prescribed. Further, because of the rectification in error, the differential IGST paid under the Customs Act does not attract the provisions of Section 17(5)(i) and accordingly the credit should be admissible to the Applicant.

4.7.2 It may be noted that the short-payment of taxes on import of goods involves two segments, viz., the duties of Customs under the Customs enactments and IGST under the GST enactments, i.e., under the IGST Act, 2017, as discussed already in para 4.6.2 above. It follows therefrom that while the differential duties of Customs are recoverable under Section 28 of the Customs Act, the corresponding taxes under IGST is liable to be recovered under Section 74 of the CGST Act, 2017, as made applicable to IGST vide Section 20 of the IGST Act, 2017.

4.7.3 The appellant goes on to state that 15% penalty is also prescribed under Section 28(5) of the Customs Act, 1962, apart from the mention of the same in Section 74(5) of the CGST Act, 2017, and therefore to state that 15% penalty is only found in Section 74(5) is erroneous. In this regard it could be seen that the exact version of para 8.10 of the impugned ruling goes as follows :-

> *"Further, it could be seen that* ***under*** *the demanding provisions of* ***CGST/TNGST Acts, 2017****, except for the provisions of Section 74(5), penalty under fifteen percent could not be found elsewhere under* ***the said legal provisions****. --------"*

Accordingly, it could be seen that the reference has been made in the instant case to GST enactments only, i.e., the CGST and TNGST Acts, in the impugned order and not in respect of any other enactments.

4.7.4 Notwithstanding the same, we intend to examine the provisions of Section 28(5) of the Customs Act, 1962, as referred by the appellant, which provides for payment of 15% penalty, and the same reads as :-

> *"(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded* ***by reason of collusion or any wilful mis-statement or suppression of facts*** *by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part,* ***as may be accepted by him****, and the interest payable thereon under section 28AA and the* ***penalty equal to fifteen per cent.*** *of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing."*

Here again, it is seen that the payment of 15% penalty under Section 28(5) of the Customs Act, 1962 is in relation to Customs duty short levied or short paid by reason of collusion or any wilful mis-statement or suppression of facts. Understandably, the provisions of Section 28(5) of the Customs Act, 1962 (towards duties of Customs) are akin to, and are on parallel lines to the provisions of 74(5) of the CGST Act, 2017 (towards taxes under IGST), in respect of the following common aspects, viz.,

- Duty/tax not levied or not paid, or short levied or short paid **by reason of collusion or any wilful mis-statement or suppression of facts**;
- Payment of tax/duty as **accepted** by the taxpayer, **along with** appropriate interest **and 15% penalty**;

- To inform the proper officer in writing about such payment made that paves way for conclusion of proceedings.

It therefore becomes clear that payment of 15% penalty on the differential duties of Customs and on the taxes under IGST are meant for conclusions of proceedings on both fronts, i.e., both Customs and GST, by reason of collusion or any wilful mis-statement or suppression of facts, whereby the stand of the AAR in Advance Ruling No.116/AAR/2023 dated 22.11.2023, stands vindicated. Once it is clear that IGST is leviable under Section 5 of the IGST Act, 2017, the payment of penalty at 15% on the same can be made only under Section 74(5) of the CGST Act, 2017, read with Section 20 of the IGST Act and therefore we are of the opinion that no rectification is warranted in this case as well, as no error or mistake is noticed.

4.7.5 Accordingly, since no error apparent on the face of the record is noticed in the instant case, no rectification is required to be made as discussed in detail above, and as the provisions of the Customs Act do not get attracted in the instant case, the differential IGST paid by the applicant becomes ineligible for availment of ITC, in terms of Section 17(5)(i) of the CGST Act, 2017,

5 In effect, we find that there is no error/mistake apparent on the face of record in the Advance Ruling No.116/AAR/2023 dated 22.11.2023 as alleged by the applicant. On the other hand, we find that the applicant is challenging the correctness and legality of the said ruling. Further we find that the Hon'ble High Court of Calcutta in the case of CIT Vs.Bhagwati Developers (P) Ltd., (261 ITR 658) has observed that a mistake apparent from the record must be an obvious and patent mistake and not something which could be established by a long drawn process of reasoning on points on which there may be conceivably two opinions; that a decision on a debatable point is not mistaken apparently from the record; that a mistake apparent from the record must be a glaring, obvious or self-evidenced mistake for which no elaborate argument is required; that if it is a mistake that requires to be established by the complicated process of investigation, argument or proof, it cannot be held to be a mistake apparent from the record.

6 In view of the above, we are of the considered opinion that there is no apparent error or mistake on the face of the record in the Advance Ruling No.116/AAR/2023 dated 22.11.2023 as alleged by the applicant. Thus, we hold that the instant application for rectification of advance ruling is liable for rejection in terms of Section 98(2) of the CGST/TNGST Acts, 2017.

24/07/2024

(A.VALLI)
Member (SGST)

AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
TAMILNADU

24/07/2024

(D.JAYAPRIYA)
Member (CGST)

To

M/s. Mitsubishi Electric India (P) Ltd.,
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Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise, No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034.

2. The Commissioner of Commercial Taxes, 2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

3. The Principal Commissioner of GST & C.Ex., Chennai Outer Commissionerate.

Copy to :-

1. The Assistant Commissioner (ST), Arumbakkam Assessment Circle, No. F-50, 1st Avenue, Anna Nagar East, Chennai – 600 102.

2. Master File / spare – 1.