

ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX

GST & CENTRAL EXCISE, RAJASWAVIHAR, BHUBANESWAR-751007
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017



Members present are:

1. Sri Anand Satpathy, OFS(SAG), Addl. Commissioner of CT&GST
Office of the Commissioner, CT&GST, Odisha Baniyakar Bhawan,
Old Secretariate Compound, Cuttack-753001-Odisha.
2. Sri Nilanjan Pan, IRS, Joint Commissioner, Office of the Audit Commissionerate
GST & Central Excise, Bhubaneswar

1	Name and Address of the Applicant	INDIAN INSTITUTE OF SCIENCE EDUCATION AND RESEARCH, TRANSIT CAMPUS GOVT. ITI, ENGINEERING SCHOOL ROAD, BERHAMPUR-760010, ODISHA.
2	GSTIN or User ID	21AABAI0732K1Z5
3	Date of Filing of GST ARA-01	06.12.2018
4	Present for the Applicant	PRAMOD KUMAR PANDA, FCA
5	Date of P.H	22.01.2019

ORDER NO.07/ODISHA-AAR/2018-19 DATED 13.02.2019

Subject: GST Act, 2017-Advance Ruling U/s 98 on 'Applicability of Notification issued under the provisions of GST Act' and ' Determination of the liability to pay tax on any goods or services or both'

- 1.0 M/s Indian Institute of Science Education and Research, Berhampur (hereinafter referred to as the 'Applicant') assigned with GSTIN **21AABAI0732K1Z5** having registered address At- Transit Campus, Govt. ITI, Engineering School Road, Berhampur, Odisha-760010 have filed an application on 06.12.2018 under Section 97 of CGST Act, 2017 & OGST Act, 2017 read with Rule 104 of CGST Rules 2017 & OGST Rules, 2017 in Form GST ARA-01 seeking an Advance Ruling on 'Applicability of Notification issued under the provisions of GST Act'. The Applicant enclosed copies of challans as proof of payment of Rs.5, 000/- for SGST bearing CIN No. SBIN18112100021878 dated 12.11.2018 and Rs.5000/- for CGST Vide CIN No. SBIN18112100081112 towards the fee for Advance Ruling. The Applicant has declared that the question raised in the application has neither been decided by nor is pending before any authority under any provisions of the GST Act. The

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jurisdictional officer concerned raised no objection to the admission of the application. The application is therefore, admitted.

2.0 Ruling is sought for in respect of the following questions :-

- a) "Whether the Notification No-51/1996-Customs, Dt: 23.07.1996 read with Notification No-43/2017-Customs, Dt: 30.06.2017 and Minutes of the 14th.GST Council Decision Dt: 18th. /19th. May,2017 is applicable for specified Imported Equipments delivered to the Eligible Institutions and the Applicant is not liable to pay the IGST charged on such imported Equipments by the OEM suppliers of imported equipment," and,
- b) "Whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the Central/State Government to give effect to such decision of the Council," and
- c) "Whether the concessional rate of GST/IGST at the 5% vide Notification No-45-CGST(Rate), Dt:14.11.2017 and Notification No-47-IGST(Rate), Dt:14.11.2017 are applicable only for supply of specified Indigenous Equipments to the eligible Institutions fulfilling conditions as specified under Column-(4) of the said notification with effect from 15.11.2017."

3.0 The facts of the case having a bearing on the questions.

- 3.1** As submitted by the Applicant, it is engaged in imparting Science Education and Research training to students and has commenced BS-MS (for 5 years) Course leading to Post-Graduate Degree. It is also conducting PhD program in various stream of Sciences from August, 2016.
- 3.2** As per the understanding of the Applicant the education and research services provided by it are exempted from levy of GST.
- 3.3** It has also developed advanced teaching and research laboratories where students can have the facility to perform experiments and to pursue advanced research. The said Research Laboratories for imparting Quality Education to the students are in the process of being installed/procured with imported equipment's from abroad or from OEM's suppliers of such imported equipment's in India.
- 3.4** Prior to 01.07.2017, it was exempted from payment of Customs Duty in excess of 5% of the duty of Customs leviable as per First Schedule to the Customs Tariff Act and also from the whole of the Additional Duty leviable under Section-3 of the Customs Tariff Act, 1975 by virtue of the Customs Notification No-51/1996, Dt:23.07.1996.
- 3.5** The concessional rate of custom duty was applicable not only for all directly imported equipments but also on import of goods by OEM suppliers for supply to eligible institutions.
- 3.6** The Government of India vide Notification No. 43/2017-Customs, Dt: 30.06.2017, amended the said Notification No-51/1996, Dt: 23.07.1996 by substituting the words,



brackets and figures, "Integrated Tax leviable thereon under sub-section (7) of Section-3" for the words and figures "additional duty leviable thereon under Section-3".

- 3.7 It is importing Scientific Equipment's either directly from Original Equipment Manufacturer or through the Agent of the OEM suppliers in India. In case of direct import, the Applicant is availing concessional Customs Duty and exemption of IGST as per NN-43/2017-Customs, Dt:30.06.2017. However, in case the same imported Equipments are procured through the OEM Agents in India, the Applicant is denied with the IGST exemption by the OEM Suppliers due to non-issuance of any specific exemption notification by the Central Government under the IGST Act to give effect to the decision of the 14th. GST Council Meeting Dt: 18/19 May, 2017 exempting IGST for the imported equipment's delivered to the eligible Institutions.
- 3.8 In the absence of corresponding Notification under the IGST Act, 2017 by the Central Government, the OEM Suppliers of such Imported Equipments supplied to the Applicant are charging IGST Rate of 28% from 01.07.2017 and IGST Rate of 5% with effect from Dt:14.11.2017 following the NN-45-CGST-Rate and NN-47-IGST-Rate, Dt:14.11.2017.

4.0 Applicants Interpretation and understanding.

- 4.1 The Applicant is of the view that Notification No-51/1996-Customs, Dt:23.07.1996 and Notification No-43/2017-Customs, Dt:30.06.2017 read with Minutes of the 14th GST Council Meeting held on Dt:18th. /19th.May,2017, IGST Exemption on Specified Equipments to Specified Institutions should be applicable both on direct import of such Equipments by the specified institutions as well as import of such equipments for delivery to such Institutions as notified by the Central Government.
- 4.2 The Applicant further understands that, in view of amendment of the Notification No. 51/1996-Customs, Dated. 23.07.1996 read with Minutes of the 14th.GST Council meeting, IGST should not be levied on equipments imported by the OEM Agents located in India for delivery to the specified institutions including the Applicant.
- 4.3 The concession granted vide NN-45-CGST-Rate, Dt: 14.11.2017 notified under Section-11(1) of the Central Goods and Services Act, 2017 and NN-47-IGST-Rate, Dt: 14.11.2017 notified under Section 6(1) of the Integrated Goods and Services Act, 2017 which came into force from 15.11.2017 is applicable to supply of all specified equipments, imported or otherwise, to the specified Institutions with effect from 15.11.2017.



5.0 Personal Hearing was fixed on 22.01.2019. Shri Pramod Kumar Panda, FCA and Shri Una Sujit, Representative of the Applicant appeared for personal hearing. They re-iterated the stand taken earlier in the written submission and filed fresh written submission during personal hearing. The jurisdictional officers from SGST & CGST also appeared for personal hearing.

5.1 In the written submission made during P.H., it is averred that the domestic suppliers (Agents of the OEM), while supplying Specified imported Equipments to Specified Institutions should not collect tax in excess of the effective rate in view of Explanation to Section-6 of IGST Act and Section-11 of the CGST and OGST Act 2017. Accordingly, the Applicant is not liable to the GST @ 28% charged on such exempted supply.

6.0 We have considered the submissions made by the Applicant in its application for advance ruling as well as the submissions made by the representative during personal hearing. We also considered the question & issues on which advance ruling is sought for by the Applicant, relevant facts having bearing on the questions / issues raised the Applicant's understanding/interpretation of law in respect of the issue.

6.1.0 Ruling is sought for in respect of the following questions :-

- a) "Whether the Notification No-51/1996-Customs, Dt: 23.07.1996 read with Notification No-43/2017-Customs, Dt: 30.06.2017 and Minutes of the 14th.GST Council Decision Dt: 18th. /19th. May,2017 is applicable for specified Imported Equipments delivered to the Eligible Institutions and the Applicant is not liable to pay the IGST charged on such imported Equipments by the OEM suppliers of imported equipment," ;
- b) "Whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the Central/State Government to give effect to such decision of the Council," and
- c) "Whether the concessional rate of GST/IGST at the 5% vide Notification No-45-CGST(Rate), Dt:14.11.2017 and Notification No-47-IGST(Rate), Dt:14.11.2017 are applicable only for supply of specified Indigenous Equipments to the eligible Institutions fulfilling conditions as specified under Column-(4) of the said notification with effect from 15.11.2017."

6.1.2 The jurisdictional officer of SGST has stated that the application filed by the Applicant is not coming under the purview of the Advance Ruling Authority as the above cited



notifications relate to the Customs Acts and it would not come under the ambit of Authority in terms of provisions made under Section 97 of the OGST Act. The objection from the State jurisdictional officer is not maintainable for the reason that Section 20 (xviii) of the IGST Act mandates mutatis-mutandis application of provisions of CGST Act in the matter of any advance ruling sought under the IGST Act. Secondly, Notification No-51/1996-Customs, Dated: 23.07.1996 as amended in Notification No-43/2017-Customs, Dt: 30.06.2017 has bearing on IGST liability on 'import of goods'. Hence, it is well within the mandate of the authority to award a ruling on the applicability of the aforesaid notifications.

6.1.3 Proviso to Section 5(1) of the IGST Act authorizes levy of IGST on goods imported in to India in accordance with the provision of Section 3 of the Customs Tariff Act 1975 and the point of taxation is same as the point of levy of customs duty. Section 2(10) of the IGST Act defines 'import of goods' meaning bringing goods into India from a place outside India. Accordingly, levy of IGST on goods imported under Proviso to Section 5(1) is strictly limited to import of goods into India and such levy has to happen at the time of customs clearance only. Hence, Notification No.51/96-Customs dated 23.07.1996 is very much applicable to the Applicant in case of import of goods.

6.1.4 The applicability of Notification No. 51/96-Customs dated 23.07.1996 as amended vide Notification No-43/2017-Customs, Dt: 30.06.2017 to "OEM Suppliers" needs to be examined. In this case, the OEM supplier is a supplier located in India and the supply of equipments by such supplier to the specified Research Institutions is undeniably a case of domestic supply. The nature of such domestic supply can be intrastate or interstate depending on the location of such supplier. The equipments supplied might have been imported from other countries and such import might be with the sole intention of supply to some pre-determined Research Institutions, which might be entitled for IGST exemption provided through the aforesaid Notifications, such as the Applicant. In spite of that, such preceding import or the intent behind such import will not alter the nature of the transactions. In other words, there are two consecutive transactions such as i) import of equipments by the OEM suppliers of his own and ii) supply of such equipments to some pre-determined or post determined Research Institutions who otherwise qualify for IGST exemption on imports. In the



aforesaid case, for the import of equipments by the OEM supplier IGST will be charged under Proviso to Section 5(1) of the IGST Act, since the said OEM supplier is not entitled for the exemption provided in the Notifications under consideration. On the subsequent domestic transaction, there will be levy of either IGST or CGST and SGST depending on the nature of the supply transaction as per the location of the supplier. In both the cases, the liability to pay GST is on the supplier and not on the Applicant. In the absence of liability there cannot be a claim for exemption. The Applicant can avail the exemption benefit only if it goes for direct import or purchase before the goods being imported into the country cross the Customs frontier of India. In that case, the IGST liability will be on the importer (in this case the Applicant) and exemption from the said liability can be claimed and availed. The Applicant cannot claim exemption from the liability of another taxable person.

6.1.5 Further, Notification No. 51/96-customs dated 23.07.1996 is restricted to importers like Public funded research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital. In the instant case, the intended beneficiary is the specified eligible institutions such as the Applicant but not the OEM suppliers. The said notification is restricted to the public funded and non-commercial research institutions and I.I.T. etc. So, by any stretch of the imagination, the said notification read with notification no. 43/2017-customs dated 30.06.2017 cannot be extended to the OEM suppliers.

6.2.0 Applicant's next question is whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the Central/State. Obviously the decision of GST Council is final and binding on the State and Central Government and accordingly, as per the decision of the council, Notification No.51/96-customs dated 23.07.1996 was amended providing for exemption from levy of IGST on import of goods. GST council is a constitutional body to formulate GST policies and to make recommendation to the Union and the State. Accordingly, every notification, circular or orders issued by the Central and State Governments are duly vetted by the GST Council. However issues pertaining to rate of tax and tax concessions/ exemptions have to be as per the statutory notifications.



6.3.0 The last question of the Applicant is "Whether the concessional rate of GST/IGST at the rate of 5% vide Notification No-45-CGST(Rate), Dt:14.11.2017 and Notification No-47-IGST(Rate), Dt:14.11.2017 are applicable only for supply of specified Indigenous Equipments to the eligible Institutions fulfilling conditions as specified under Column-(4) of the said notification with effect from 15.11.2017." In this regard, it is clarified that Government of India, Ministry of Finance (Department of Revenue) vide the aforesaid notifications exempts in access of 5% (2.5% in case of CGST) the specified goods as listed under column (3) of the said notification to specific institutions subject to the conditions as specified in the corresponding entry in column (4) of the said notification. The said notifications do not distinguish between imported and indigenous goods. The specified goods are (a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (for experimental purposes); (c) Computer software, Compact Disc Read Only Memory (CDROM), recorded magnetic tapes, microfilms, microfiches; (d) proto-types, the C.I.F. value of which does not exceed rupees fifty thousand in a financial year. Therefore, concessional rate of IGST at 5%, CGST @ 2.5% and SGST @2.5% vide the aforesaid Notifications is applicable to supply of all the specified goods as mentioned above whether imported or indigenous.

RULING

In view of the foregoing discussion, we pass the following.

1. Notification No-51/1996-Customs, dated 23.07.1996 read with Notification No-43/2017-Customs dated 30.06.2017 and Minutes of the 14th. GST Council Decision dated 18th. /19th. May, 2017 is applicable to the Applicant for import of specified Equipments as listed under column (3) of the aforesaid notifications and the said notifications are not applicable to the OEM suppliers of imported equipment.
2. The scope of issuing a ruling u/s 98 of the OGST/CGST Act is limited to the extent prescribed in sub-section (2) of Section 97 of the OGST/CGST Act. A ruling on whether the decision of the GST Council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the Central/State Government is not within the competence and mandate of the Authority of Advance Ruling constituted u/s 96 of the OGST Act.
3. Concessional rate of GST/IGST at 5% vide Notification No-45-CGST (Rate), Dt: 14.11.2017 and Notification No-47-IGST (Rate), Dt: 14.11.2017 is applicable to the goods mentioned at Para 6.3.0 as above whether imported or indigenous.



The applicant or the jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for Advance Ruling under Section 100 of the OGST/CGST Act, 2017 within 30 days from the date of receipt of the Advance Ruling.



Nilanjan Pan
Member CGST



Anand Satpathy
(Member SGST)

File No. V (1) ARA/Odisha/BBSR/2018/07/ 3593A-95A dated-13.02.2019

To

M/s INDIAN INSTITUTE OF SCIENCE EDUCATION AND RESEARCH,
TRANSIT CAMPUS - GOVT. ITI, ENGINEERING SCHOOL ROAD,
BERHAMPUR - 760010, ODISHA.

Copy Forwarded to:-

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2. The Commissioner, GST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack, Odisha, 753001.
3. Office Copy.



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(Adhir Kumar Das) 13.2.19
Superintendent (CGST),
Advance Ruling Authority, Odisha.