

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/S.98 OF
THE GOODS AND SERVICES TAX ACT, 2017

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.
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Advance Ruling No. 06/ARA/2024 Dated: 30.04.2024

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*
- 3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any / User id		33AAXCS8681F1ZN
Legal Name of Applicant		M/s. Sunwoda Electronic India Private Limited
Trade Name of Applicant (Optional)		M/s. Sunwoda Electronic India Private Limited
Registered Address / Address provided while obtaining user id		C/o Snowman Logistics Limited, No. 199, 200/2, Nayapakkam Main Road, Near ETA Apartments, Irrungattukottai, Sriperumbudur Taluk, Mevalurkuppam, Kancheepuram, Tamil Nadu, 602 105.
Details of Application		Form GST ARA – 01 Application Sl.No.98/2023/ARA, dated 15.09.2023.
Concerned Officer		Center : Irungattukottai Division, Chennai Outer Commissionerate. State : Sriperumbudur Assessment Circle, Kancheepuram Divison.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Warehouse/Depot
B	Description (in brief)	The Applicant enters into a contract with an Original Equipment Manufacturer licensed under Section 65 of the Customs Act, 1956, read with Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019 ("OEM's MOOWR unit") for supply of imported Portable Lithium System Batteries. In order to perform the contract, the said goods are imported by the Applicant from abroad to a 3P FTWZ in India. The goods are sold to the OEM's MOOWR unit while lying in the 3P FTWZ and are cleared under bond by the OEM's MOOWR unit, on need basis.
Issue/s on which advance ruling Required		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.
Question(s) on which advance ruling Is required		Whether, in the facts and circumstances of the case, GST is leviable on the sale of Applicant's goods warehoused in a third-party Free Trade Warehousing Zone ("3P FTWZ") on "as is where is" basis to customer who clears the same to bonded warehouse under MOOWR Scheme?

M/s. Sunwoda Electronic India (P) Ltd., No. 199, 200/2, C/o Snowman Logistics Limited, Nayapakkam Main Road, Near ETA Apartments, Irrungattukottai, Sriperumbudur Taluk, Mevalurkuppam, Kancheepuram, Tamil Nadu, 602105 (hereinafter called as 'the Applicant') who are engaged in the business of importing and trading Portable Lithium System Batteries classifiable under 85076000, are registered under GST with GSTIN 33AAXCS8681F1ZN.

2 The Applicant enters into a contract with an Original Equipment Manufacturer (OEM in short) licensed under Section 65 of the Customs Act, 1956, read with Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019 (MOOWR in short) for supply of imported Portable Lithium System Batteries. In order to perform the contract, the said goods are imported by the Applicant from abroad to a third party Free Trade Warehousing Zone (3P FTWZ in short) in India. The goods are sold to the OEM's MOOWR unit while lying in the 3P FTWZ and are cleared under bond by the OEM's MOOWR unit, on need basis. Under these circumstances, the applicant have filed an application seeking Advance Ruling on the following question :-

"Whether, in the facts and circumstances of the case, GST is leviable on the sale of Applicant's goods warehoused in a third-party Free Trade Warehousing Zone ("3P FTWZ") on "as is where is" basis to customer who clears the same to bonded warehouse under MOOWR Scheme?"

3.1 The Applicant submitted a copy of challan vide CIN ICIC23083300470645 dated 22.08.2023 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

3.2 The authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the Advance Ruling application and for comments on the issues raised.

4. In their application for Advance Ruling, the Applicant has stated that –

- The steps involved in the said business-model/on going transaction of the Applicant with OEM's MOOWR Unit are described step-wise as below :-

STEP 1 – Import and Storage of goods in 3P FTWZ

- The applicant places the order for import of Portable Lithium System Batteries on its overseas group company, viz., M/s. Sunwoda Electronic Co. Ltd., China.
- The applicant has entered into a warehousing agreement with M/s.DHL Supply Chain India (P) Ltd., (DHL in short) for storage of imported goods in the 3P FTWZ situated at Nandiambakkam Village, Thiruvallur District, Tamilnadu, on its behalf.

- On import, the goods are billed to the applicant, while being shipped directly to the 3P FTWZ for storage, and accordingly, the 'Bill to' party would be the applicant and the 'Ship to' party would be DHL.
- The 'ship-to' party, i.e., DHL files the Bill of Entry for Warehousing on behalf of the applicant. Once the imported goods reach the 3P FTWZ, the same are stored there until further sale of such goods by the applicant.

STEP 2 – Sale of warehoused goods on “as is where is” basis to OEM’s MOOWR unit

- The applicant negotiates and executes the sale of said goods on “as is where is” basis to OEM’s MOOWR unit through a formal contract of sale.
- In this step of transaction, the Commercial Invoice and Packing list carry 'Bill From' party as M/s.Sunwoda (the Applicant), and the 'Ship From' party as DHL (the 3P FTWZ).
- Further, the 'Bill to' party would be OEM customer name and address, and the 'Ship to' party would be the OEM Customer’s MOOWR unit and its address, which does not alter the fact that the Applicant sell the goods lying in FTWZ warehouse to OEM’s MOOWR unit by transfer of title.

STEP 3 – Clearance/movement of goods from 3P FTWZ to MOOWR Warehouse

- For effecting the movement of goods, the OEM’s MOOWR unit provides the authorization to file Bill of Entry, IEC/GST/AD Code, Warehouse license and WH code to DHL.
- This type of movement is permissible in terms of CBIC’s Circular No.48/2020-Customs dated 27.10.2020 which has clarified that a Section 65 unit (a MOOWR Warehouse) may source capital goods and inputs from a SEZ/FTWZ, following the applicable procedures, and that the same is governed by Rule 46(13) of the Special Economic Zones Rules, 2006 read with Instruction No.63 dated 10.08.2010 (No.C.3/21/20098-SEZ).
- DHL files the Bill of Entry (Bonded Warehouse) at 3P FTWZ Customs for arranging the Space Certificate by the customer, i.e., OEM’s MOOWR unit and upon receipt of the same, the Bill of Entry gets assessed with duty foregone for warehousing in another MOOWR (bonded) Warehouse.
- DHL then arranges the movement of goods from 3P FTWZ based on the quadruplicate BOE, Space Certificate and E-Way bill issued along with commercial invoice.
- On receipt of the said goods at MOOWR warehouse, the customer arranges the Re-warehouse certificate within 45 days to complete the transaction,

after which the customer can use the goods for their export or it can be used for local supply on payment of customs duty.

The instant application seeks determination of GST implication of Step 2 supra, i.e., whether GST is leviable on the sale of goods warehoused in 3P FTWZ on “as is where is” basis to customer who clear the same to bonded warehouse under the MOOWR Scheme.

5. The Central jurisdictional Officer viz. the Assistant Commissioner of CGST & Central Excise, Irungattukottai Division, Chennai Outer Commissionerate, have brought out the applicant’s interpretation of law and facts, in respect of the question on which advance ruling is sought and stated that in view of the same, it appears that GST is not leviable on the sale of applicant’s goods warehoused in a third-party Free Trade Warehousing Zone (“3P FTWZ”) on “as is where is” basis to customer who clears the same to bonded warehouse under MOOWR Scheme.

6. The State jurisdiction Officer viz. the Assistant Commissioner (ST), Sripeumbudur Assessment Circle stated that there is no proceedings pending in relation to the question raised by the applicant.

7.1 On interpretation of law, the applicant states that as follows :-

- The applicant are engaged in the business of trading in imported portable Lithium System Batteries classifiable under HSN Code 85076000. The applicant entered into a contract with an Original Equipment manufacturer licensed under Section 65 of the Customs Act, 1956 read with Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019 (“**OEM’s MOOWR Unit**”) for supply of imported Portable Lithium System Batteries. In order to perform the contract, the said goods are imported by the applicant from abroad to a third-party Free Trade Warehousing Zone (“**3P FTWZ**”) in India. The goods are sold to the OEM’s MOOWR unit while lying in the 3P FTWZ and are cleared under bond by the OEM’s MOOWR unit, on need basis.
- The applicant stated that this type of movement is permissible in terms of CBIC Circular No. 48/2020-Customs dated 27.10.2020 which has classified that a Section 65 unit (a MOOWR Warehouse) may source capital goods or inputs from a SEZ/FTWZ unit, following the applicable procedures. They further stated that this type of movement of goods from FTWZ to bonded warehouse is governed by Rule 46(13) of the SEZ Rules, 2006 read with Instructions No. 63 dated 10.08.2010 (No. C.3/21/2009-SEZ). The applicant and its customers i.e., OEM’s MOOWR unit duly comply with the said provisions.
- Under GST, the taxable event is ‘supply’. Section 7(1)(a) of the CGST Act explains the scope of the term ‘supply’ in an expansive manner to include all forms of supply of goods. However, Section 7(2)(a) of the CGST Act provides that notwithstanding anything contained in sub-section (1),

activities or transactions specified in Schedule III of the CGST Act, 2017 shall be treated neither as a supply of goods nor a supply of services. Para 7 and 8 with Explanation 2 therein to Schedule III is extracted below for ease of reference:

“ 7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Explanation 1.- For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Explanation 2.- For the purposes of paragraph 8, the expression —warehoused goods shall have the same meaning as assigned to it in the Customs Act, 1962.”

- The Customs Act, 1962 defines the expression "warehoused goods" and "warehouse hereunder:

(44) "warehoused goods" means goods deposited in a warehouse;

(43) "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A:

- The charging section, i.e., Section 9 of the CGST Act, 2017 provides for the levy and collection of a tax called the Central Goods and Services Tax on all "intra-State supplies of goods or services or both" at notified rates. An identical provision has also been provided for in the TNGST Act. Further *pari materia* provisions exist for the levy and collection of the Integrated Goods and Services Tax (IGST) on "inter-state supplies of goods or services or both" under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act").
- Thus, once a transaction or activity is treated neither as a supply of goods nor a supply of services on account of its inclusion in Schedule III, GST is not leviable on said transaction or activity.
- The applicant further stated that Para 8(a) of Schedule III covers the transaction of supply of warehoused goods to any person before clearance for home consumption. As per Section 2(n) of the SEZ Act, 2005 "Free Trade and Warehousing Zone" means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are

carried on. Further, as per Section 53 of the SEZ Act, 2005 a Special Economic Zone is deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations. Resultantly, it is submitted that when the goods are warehoused in an FTWZ (SEZ), the said goods have not entered home consumption as the goods are stored in an area which is beyond the customs frontiers of India. In this regard, reliance is placed on the decision of **Covema Wood Plast Vs. State of Kerala [2006 (334) E.L.T. 649 (Ker.)]** Thus, as far as the sale by the applicant and the movement of the same to the MOOWR warehouse is concerned, it is submitted that the same is covered by Para 8(a) of Schedule III to the CGST Act. In this regard, the applicant place reliance on the decision of the Authority of Advance Ruling, Tamil Nadu in the case of *M/s. The Bank of Nova Scotia, 2019 (2) TMI 195 - AUTHORITY FOR ADVANCE RULING, TAMILNADU*, *M/s Sadesa Commercial Offshore De Macau Limited, 2019 (2) TMI 194-AUTHORITY FOR ADVANCE RULING, TAMILNADU*, and *M/s AIE Fiber Resource and Trading (India) Private Limited, 2021(12) TMI 1265 - AUTHORITY FOR ADVANCE RULING, TELANGANA*.

- In addition to applicant's claim that the sale of applicant's goods warehoused in 3P FTWZ on "as is where is" basis to customer who clears the same to bonded warehouse under MOOWR Scheme is covered under Para 8(a) of Schedule III of the CGST Act, 2017, the applicant also stated that their aforementioned transaction also falls under Para 7 of the Schedule III of the CGST Act, 2017. Para 7 of Schedule III covers the supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. Section 2(79) of the CGST Act defines 'non-taxable territory' to mean the territory which is outside the taxable territory. Further, Section 2(109) of the CGST Act defines 'taxable territory' to mean the territory to which the provisions of the CGST Act applies. Section 1 of the CGST Act provides that the Act extends to the whole of India. The term 'India' has been defined in Section 2(56) 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 (80 of 1976), and the air space above its territory and territorial waters.
- As per Section 53 of the Special Economic Zones Act, 2005 ("SEZ Act") which provides that a Special Economic Zone is deemed to be a territory outside the customs territory of India for the purpose of undertaking the authorized operations. Section 2 (za) of the SEZ Act defines the term "Special Economic Zone" to mean each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone). Thus, it is submitted that a FTWZ is deemed to be a territory outside the customs

territory of India in terms of Section 53 read with Section 2 (za) of the SEZ Act. Moreover, as per Section 51 of the SEZ Act, the provisions of the SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law. Thus, it is submitted that FTWZ is deemed to be a territory outside the customs territory of India in terms of Section 53 and Section 2(za) of the SEZ Act. Further, in terms of Section 51, said deeming fiction is given an overriding effect over any other law. Consequently, it is submitted that supply of goods lying in FTWZ on "*as is where is basis*" which is cleared by the customer to its MOOWR Warehouse would be a transaction falling under Para 7 of Schedule III on account of the deeming fiction treating the FTWZ to be outside the customs territory of India.

- Therefore, in view of the above submissions, the applicant has submitted that GST is not leviable on the sale of applicant's goods warehoused in a third-party Free Trade Warehousing Zone ("3P FTWZ") on "*as is where is*" basis to customer who clears the same to bonded warehouse under MOOWR Scheme.

PERSONAL HEARING

8.1 The Applicant, was given an opportunity to be heard in person on 10.01.2024. Ms. Sahana, Advocate and the Authorised Representative (AR), Mr. Pavan Varshiney, Sr.Manager (Customs & Logistics), and Mr.Randhir Yadav, Sr.Manager (Finance & Taxation) of M/s. Sunwoda Electronics India (P) Ltd., appeared for the personal hearing. The AR reiterated the submissions made at the time of filing the application. In addition to the same, they furnished an additional submission along with the relevant legal provisions and the case laws, rulings, etc., that they intended to rely on, in relation to this case.

8.2 In the additional submissions furnished by them during the personal hearing, they reiterated the following aspects, viz.,

- (i) Sale of Applicant's goods is covered by Para 8(a) of Schedule III.
- (ii) Public Notice 16/2021 dated 05.04.2021 supports Applicant's stand.
- (iii) Advance Ruling No.23/ARA/2023 dated 20.06.2023 in the case of M/s. Haworth India Private Limited, is not applicable to the applicant, as the said ruling was issued in different factual scenario.
- iv) Without prejudice to the foregoing, sale of Applicant's goods is covered by Para 7 of Schedule III.

8.3 The applicant filed further submissions dated 20.03.2024, wherein they highlighted the fact that the Advance Ruling No.23/ARA/2023 dated 20.06.2023 as referred above, in the case of M/s.Haworth India Private Limited, has also been set aside recently and remanded to the Lower Authority for reconsideration and

passing of appropriate order by the Tamilnadu Appellate Authority for Advance Ruling vide Order-in-Appeal No.AAAR/06/2023 (AR) dated 20.12.2023.

DISCUSSION AND FINDINGS:

9.1 We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing, and the comments furnished by the jurisdictional tax officers.

9.2 From the submissions made at the time of filing the application, it is seen that the applicant had sought an advance ruling, on the following aspect, viz.,

“Whether GST is leviable on the sale of Applicant’s goods warehoused in a third party Free Trade Warehousing Zone (“3P FTWZ”) on “as is where is” basis to customer who clears the same to bonded warehouse under MOOWR Scheme?”

It is seen that the query relates to a situation where a sale of goods take place, when the goods are still lying in a bonded warehouse, and as to whether the said sale constitute a ‘supply’ and its implications from the GST point of view.

9.3 Prima facie, we observe that the imported goods of the applicant are initially warehoused in a third party Free Trade Warehousing Zone (“3P FTWZ”), where the third party with whom the applicant has entered into a warehousing agreement, happens to be M/s.DHL Supply Chain India (P) Ltd., (DHL in short). On perusal of the “Warehousing, Logistics and Customs Clearance Services Agreement” dated 21.06.2023, it is seen that the said agreement has been entered into by the applicant with DHL for the purpose of provision of FTWZ warehousing, storage, safekeeping, customs clearance, transportation and other subsidiary services by DHL to the applicant. Further, as per ‘Article 4 Customs Clearance’ of the agreement, DHL acts for the applicant in processing the declaration of inbound/outbound FTWZ warehouse, and as per ‘Article 5 Transportation’, DHL is responsible for the safe transportation of the applicant’s goods.

9.4.1 Moving on to the legalities impacting the instant case, it is seen that as per Section 2(n) of the Special Economic Zones Act, 2005 (SEZ Act in short),

*“(n) **“Free Trade and Warehousing Zone”** means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on;”*

And as per Section 2(za) of the SEZ Act,

*“(za) **“Special Economic Zone”** means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;”*

It is clear from the above, that a Free Trade Warehousing Zone (FTWZ) gets covered as a Special Economic Zone (SEZ), within the meaning of the term. Further, as per Rule 8(5) of the SEZ Rules, 2006,

“(5) The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions and shall be allowed for trading with or without labeling, packing or repacking without any processing.”

9.4.2 The SEZ link to Customs Act, is established under Section 53 of the SEZ Act, which runs as below,

“53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.—*A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.*

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962).”

From the above, it becomes clear that Special Economic Zones are deemed to be considered as ports, airports, inland container depots, land stations, outside the Customs territory of India, under Section 7 of the Customs Act, 1962, which deals with the appointment of ports, airports, etc.

9.4.3 Further, as per Section 51 of the SEZ Act, the provisions of this Act, shall have an overriding effect over any other law, which is reproduced below :-

“51. Act to have overriding effect.—*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

9.4.4 A combined reading of the above provisions shows that Free Trade Warehousing Zone (FTWZ) is part of SEZ scheme and it is a Customs bonded warehouse. Warehousing of goods that are imported without payment of appropriate Customs duties are carried out in these zones. SEZ is a specifically delineated duty free enclave which is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs. Normally, the applicant imports goods and stores them in FTWZ till he finds a local customer who will purchase the goods and such purchaser clears the goods under the Customs Act. In other words, the goods would become exigible to tax under the domestic enactments only when they are released for home consumption.

9.4.5 This fact was reiterated in the CBIC Circular No.3/1/2018-IGST dated 25.05.2018, the excerpts of which are reproduced below :-

“3. It is seen that the “transfer/sale of goods while being deposited in a customs bonded warehouse” is a common trade practice whereby the importer

files an into-bond bill of entry and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

4. It may be noted that as per sub-section (2) of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act"), the supply of goods imported into the territory of India, till they cross the customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, the proviso to sub-section (1) of section 5 of the IGST Act provides that the integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA"). Thus, in case of supply of the warehoused goods, the point of levy would be the point at which the duty is collected under section 12 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act") which is at the time of clearance of such goods under section 68 of the Customs Act.

5. It may also be noted that sub-section (8A) has been inserted in section 3 of the CTA vide section 102 of the Finance Act, 2018, with effect from 31st March, 2018, so as to provide that the valuation for the purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or the value as per sub-section (8) of section 3 of the CTA (i.e. valuation done at the time of filing the into-bond bill of entry), whichever is higher.

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.

7. This Circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018."

9.4.6 However, from 01.02.2019 onwards, when an amendment to Schedule III of the CGST Act, 2017 took place to the effect that 'supply of warehoused goods to any person before clearance for home consumption shall be neither a supply of goods nor a supply of services.', the aforesaid Circular became redundant, and so the same stood rescinded by way of another Circular No.04/01/2019-GST dated 01.02.2019, which read as below :-

"The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019. Schedule III of the CGST Act, 2017 has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

2. Accordingly, Circular No. 03/01/2019-IGST dated 25th May, 2018 is hereby rescinded."

9.5 It may be noted that though the IGST Act, 2017 has self-containing provisions relating to 'Levy and collection of Tax', it does not contain the provisions relating to 'Scope of supply', 'time and value of supply', 'input tax credit', 'demand and recovery', etc. The provisions of Central Goods and Services Tax Act, 2017 applies mutatis mutandis in relation to integrated tax in respect of such provisions, as provided under Section 20 of the IGST Act, 2017. Therefore, with the amendment to Schedule III of the CGST Act, 2017 with effect from 01.02.2019, with regard to 'scope of supply', the integrated tax also stands impacted to that extent.

9.6 From the legal provisions referred above, it becomes clear that even before the amendment to Schedule III of the CGST Act, 2017, the legal position was that the supply of goods before their clearance from the warehouse would not be subject to the levy of Customs duty or integrated tax and that the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. It was made all the more conspicuous, post the amendment carried out through para 32 of the Central Goods and Services Tax (Amendment) Act, 2018 (No.31 of 2018), whereby clauses 7 and 8 were added to Schedule III of the CGST Act, 2017, along with Explanation 2, as follows:-

32. In Schedule III of the principal Act, —

(i) after paragraph 6, the following paragraphs shall be inserted, namely:—

"7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."

(ii) the Explanation shall be numbered as Explanation 1 and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:—

***'Explanation 2.—**For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.'*

In this regard, it may be seen that though the terms 'warehouse' and 'warehoused goods' have not been defined under the SEZ Act, 2005, the same have been defined under Section 2(43) and 2(44) of the Customs Act, 1962, as

*"(43) **"warehouse"** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A."*

*"(44) **"warehoused goods"** means goods deposited in a warehouse"*

9.7 It may be seen that the SEZ Act does not carry such definitions, but that the same is due to the fact that apart from the definitions in-built under the SEZ Act, the definitions under other Acts are also borrowed, as the case may be, as specified under Section 2(zd) of the SEZ Act, which reads as,

"(zd) all other words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the Customs Act, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts."

Therefore, the 'warehoused goods', as specified in clause 8(a) of the Schedule III, covers the warehouses/warehoused goods in respect of the FTWZ/SEZ, being discussed in the instant case, as well.

9.8 On perusal of the documents towards import of the goods in question, furnished by the applicant, it is seen that apart from the Invoice, Packing list and the Airway Bill, the Bill of Entry vide Sl.No.1005705 dated 07.07.2023 in the instant case has been filed as "Bill of Entry for Warehousing" where under the importer's details, the SEZ Entity has been referred as M/s.DHL Supply Chain India (P) Ltd., and the client (Indian) has been referred as M/s.Sunwoda Electronic India (P) Ltd. This being the case, it is clear that there is no requirement of payment of duties of Customs including IGST, as long as the imported goods in question stay warehoused, either in a Customs bonded warehouse, or in a warehouse under a FTWZ/SEZ.

9.9 Moving on to the next leg of transaction involving 'Sale of warehoused goods on "as is where is" basis to OEM's MOOWR unit', it is seen that MOOWR refers to "Manufacture and Other Operations in Warehouse", which in turn is governed by 'Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019', as specified under Notification No.69/2019-Customs (N.T) dated 01.10.2019. Section 65 of the Customs Act, deals with 'Manufacture and other operations in relation to goods in a warehouse', and it reads as below :-

***"65. Manufacture and other operations in relation to goods in a warehouse.—**(1) With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions] as may be prescribed, the owner of any warehoused goods may carry on any*

manufacturing process or other operations in the warehouse in relation to such goods."

9.10 In this regard, the CBIC Circular No. 48/2020-Customs dated 27.10.2020 throws light on whether a Section 65 unit can procure goods from FTWZ, and the clarification runs as,

"(iii) Whether a Section 65 unit can procure goods from FTWZ : Circular 34/2019-Customs dated 1st October 2020, does not explicitly mention sourcing of goods from FTWZ. Hence there is apprehension on whether such sourcing is allowed.

Clarification : Vide para 14 of Circular 34/2019-Customs dated 1st October 2020, Board has clarified that the objective of Section 65 is to enable manufacture and other operations in customs bonded warehouses. For this purpose, the units should be able to procure required raw materials, consumables, capital goods etc., imported or procured from domestic market.

There are no restrictions imposed on sourcing of goods by units operating under Section 65. Moreover, the units are GST registrants, which are also allowed to procure goods from SEZ/FTWZs. In view of the foregoing, it is clarified that a Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedures."

9.11 Under Rule 46(13) of the SEZ Rules, 2006, a unit is permitted to transfer goods to a bonded warehouse without payment of duty, and it runs as below :-

"(13) The Authorized Officer may permit a Unit to transfer goods to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or to a bonded warehouse, without payment of duty subject to following conditions, namely."

On perusal of the documents furnished by the applicant in relation to the execution of sale of said goods on "as is where is" basis to OEM's MOOWR unit, it is seen that M/s.Foxconn Hon Hai Technology India Mega Development (P) Ltd., has entered into a Purchase Agreement dated 22.07.2019 with the applicant, and the Bill of Entry vide Sl.No.2006353 dated 15.07.2023 in the instant case has been filed as "Bill of Entry for Warehousing (SEZ to Bonded Warehouse [Rule 46(13)]" where the importer's name has been referred as M/s.Foxconn Hon Hai Technology India Mega Development (P) Ltd., and under the supplier details, SEZ Entity has been referred as M/s.DHL Supply Chain India (P) Ltd., and the client (Indian) has been referred as M/s.Sunwoda Electronic India (P) Ltd. It is also seen that the said BOE carries a Certificate to this effect, i.e.,

"SPACE CERTIFICATE NO.FOXCONN Import/SAC/01/2023-24 DT.14/07/2023, WH CODE-CDL1R019 THE SHIPMENT MOVED FROM FTWZ to PRIVATE BOND ED WAREHOUSE UNDER SEZ RULE 46(13) WITHOUT PAYMENT OF DUTY. THE VALUE DECLARED IN THIS BE IS NOT LESS THAN INWARD PRICE-IMPORT BOE NO.1005705 DT.07.07.2023, Seal number : 0078771"

9.12 In this regard, the applicant had pointed out in their additional submissions made during the personal hearing that the Public Notice No.16/2021 dated 05.04.2021 issued by the Commissioner of Customs, City Customs Commissionerate, Bengaluru issued on '*procedure to be followed by Warehouses permitted for manufacture and other operations under Section 65 of the Customs Act, 1962 read with MOOWR, 2019*', clarifies the position in 'Part III. Procurement of goods from SEZ/FTWZ', as under :-

"III. Procurement of goods from SEZ/FTWZ : Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following applicable procedures. As per Rule 46(13), SEZ units can clear the goods to Warehouses without payment of duty."

9.13 Further, under FAQs issued by CBIC in F.No.484/03/2015-LC (Pt) on "Manufacture and Other Operations in Customs Warehouse", clarifications have been issued on various queries, including a situation as to whether unit undertaking manufacture and other operations in a bonded warehouse can import inputs without payment of duty. Here again, it has been clarified that Manufacture and other operations in a bonded warehouse is a duty deferment scheme, and that the import duties (both BCD and IGST) stand deferred till they are cleared from the warehouse for home consumption. Query No.10 of the said FAQ and its clarification are reproduced as under :-

p"10. Can a unit undertaking manufacture and other operations in a bonded warehouse import inputs without payment of duty? If yes, whether only BCD or both BCD and IGST on imports is covered? For how long is duty deferment available? Is interest payable after some time?

Response: Manufacture and other operations in a bonded warehouse is a duty deferment scheme. Thus both BCD and IGST on imports stand deferred. In the case of goods other than capital goods, the import duties (both BCD and IGST) stand deferred till they are cleared from the warehouse for home consumption, and no interest is payable on duty. In case the finished goods are exported, the duty on the imported inputs (both BCD and IGST) stands remitted i.e. they will not be payable. The duty deferment is without any time limitation."

9.14 In fine, we find that when the imported goods are warehoused, as long as the said goods are not cleared for home consumption, duties under Customs including IGST are not required to be discharged. Specifically, the legal position of such cases became much clearer, after the amendment whereby clauses 7 and 8 were added with effect from 01.02.2019 to Schedule III of the CGST Act, 2017, which talks about 'Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services'.

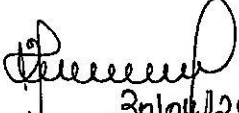
9.15 We therefore hold that the instant case of the applicant, where the imported goods stored in a 3P FTWZ warehouse, is being moved to the Bonded Warehouse (MOOWR) on effecting a sale to an OEM's MOOWR unit, taxes under GST are not

leviable, as the transaction gets squarely covered under clause 8(a) of the Schedule III of the CGST Act, 2017, which reads as "Supply of warehoused goods to any person before clearance for home consumption".

10. Based on the above discussions, we rule as under:

RULING

GST is not leviable on the sale of goods warehoused in 3P FTWZ on "as is where is" basis to customer who clear the same to bonded warehouse under the MOOWR Scheme.


(A. VALLI)
Member (SGST)




(D JAYAPRIYA)
Member (CGST)

To

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No. 199, 200/2, C/o Snowman Logistics Limited,
Nayapakkam Main Road, Near ETA Apartments,
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//by RPAD//

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