

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6**

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

Members present are:

1. Ms. Manasa Gangotri Kata IRS., Joint Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai.

2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT)/Member (FAC),
Office of the Joint Commissioner (ST), Enforcement /
Inter-State Investigation Cell, Chennai-6.

ORDER No.24/AAR/2018 DATED : 31.12.2018

GSTIN Number, if any / User id	Unregistered
Legal Name of Applicant	M/s. Sadesa Commercial Offshore De Macau Limited
Registered Address/Address provided while obtaining user id	Price Warehouse & Co.LLP, 8 th Floor, Prestige Palladium Bayan, 129-140, Greams Road, Chennai-600006
Details of Application	GST ARA – 01, Application Sl.No. 24/2018/ARA dated :05.06.2018
Concerned Officer	State : The Assistant Commissioner (ST), Nungambakkam Assessment Circle, Nungambakkam Taluk Office Building, Spurtank Road, Chetpet, Chennai – 600 031. Centre : Chennai North Commissionerate- Division- Nungambakkam
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Warehouse/Depot, SEZ
B Description (in Brief)	Involved in trading in Bovine Leathers
Issue/s on which advance ruling required	Determination of liability to pay tax on any services supplied to end customers through third party Free Trade Warehousing Zone units.
Question(s) on which advance ruling is required	Whether sale of tanned bovine leather stored in Free Trade Warehousing Zone (FTWZ) by a foreign supplier which is cleared to Domestic Tariff Area (DTA) customer in India would result in supply subject to levy under sub section 1 of section 5 of the IGST Act 2017 or under the provisions of CGST Act, 2017 or Tamil Nadu GST Act, 2017 and the rules made there under.

	2. Whether the foreign supplier being the applicant, located outside the taxable territory and supplying goods to DTA customers on the goods stored in third party FTWZ unit is required to get registered under the IGST ACT 2017 or under the provisions or CGST ACT 2017 or the Tamil Nadu Goods and Service Tax Act, 2017 and the rules made thereunder.

Note: Any appeal against the advance ruling order shall be filed before the Tamilnadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax 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 Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Sadesa Commercial Offshore De Macau (hereinafter called as Sadesa or Applicant) is a leather manufacturer producing quality crust and finished leather in its industrial facilities. The Applicant specializes in high quality bovine leather for the most demanding footwear, leather goods and upholstery industries. The Sadesa Group operates a global network of offices and commercial alliances in 18 countries across five continents. The Group has been currently supplying leathers to Indian Shoe manufacturers mainly from Thailand and Argentina.

The Applicant has submitted the copy of application in Form GST ARA – 01 and also submitted a copy of Challan 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.

The Applicant has sought Advance Ruling on:

1. Whether sale of tanned bovine leather stored in Free Trade Warehousing Zone (FTWZ) by a foreign supplier which is cleared to Domestic Tariff Area (DTA) customer in India would result in supply subject to levy under sub section 1 of section 5 of the IGST Act 2017 or under the provisions of CGST Act, 2017 or Tamil Nadu GST Act, 2017 and the rules made there under.

2. Whether the foreign supplier being the applicant, located outside the taxable territory and supplying goods to DTA customers on the goods stored in third party

FTWZ unit is required to get registered under the IGST ACT 2017 or under the provisions or CGST ACT 2017 or the Tamil Nadu Goods and Service Tax Act, 2017 and the Rules made thereunder:

2.1 Sadesa has informed that they are contemplating to make supplies to its Indian customers on just in time basis. Towards this, they are exploring the option of entering into a service agreement with a Logistics Service Provider ('LSP'), for clearance /handling of goods from customs and for storage of goods in the warehousing unit of the LSP situated in a FTWZ unit at Chennai, India from where the goods would be cleared by the customers in India, on need basis. The title to the goods stored in FTWZ unit remains with Sadesa during storage of goods in FTWZ.

2.2 The Applicant has submitted that they propose to export goods (i.e., tanned bovine leather) to India. Such goods would be cleared from the Customs port and stored in the FTWZ unit. In the warehousing facility of LSP no manufacture or processing activities are done. Upon identifying the customers, goods would be sold by the applicant from the FTWZ unit to the customers across India. The Customer would pay the applicable customs duty and IGST duly computed on the sale price of Sadesa as per the Bill of Entry ('BOE') filed by the customer and clear the goods accordingly.

2.3 Sadesa has also informed that they would enter into an agreement with FTWZ unit of LSP, Chennai for Clearing /handling of goods from customs port and for storage of goods until the goods are sold to customers in India of Sadesa on need basis. Sadesa would place a purchase order for import of goods (i.e. tanned bovine leather) from Sadesa Group (entities situated in Thailand, Argentina & Uruguay) to India (Chennai). Based on the said PO, Sadesa Group would export goods to India by mentioning M/s. Sadesa Macau c/o LSP as "Shipping address" in all export documents including export invoice. Prior to arrival of goods in the customs port, Sadesa would intimate the LSP in Chennai and on arrival of goods, the FTWZ unit of LSP would file 'BOE' in the name of M/s. LSP, on account of M/s. Sadesa Macau and the transshipment permission is stamped on the fifth copy of the BOE', along with other relevant documents and clear goods without

payment of customs duty. Such goods are stored in the FTWZ unit on behalf of Sadesa Macau. The title to the goods stored in FTWZ unit remains with Sadesa during storage.

2.4 The Applicant has also informed that they would identify customers and finalize the price and quantity of goods to be sold. Upon finalization, Sadesa would raise a sale invoice on the customers in foreign currency. Based on the said invoice and instruction to dispatch the goods, LSP would prepare a BOE, in customers name detailing the duty payable, and the list of documents necessary for clearance and send to the customer for payment of Basic Customs Duty ('BCD') & IGST. The Customer would pay the applicable customs duty including IGST duly computed on the value as under the customs provisions as per the BOE raised by LSP, Chennai, and clear the goods accordingly under section 30 of Special Economic Zone ('SEZ') Act, 2005 and read with the Customs laws as regards duties payable.

2.5 The Applicant has submitted that under the pre GST regime the transaction of transshipment of goods from Customs port to FTWZ were not taxable, since FTWZ unit was exempted from taxes as specified in section 26(1) (a) of SEZ act 2005 vide Rule 27 of SEZ rules 2007 and the same is continued under the GST regime. As per Section 7(2) of IGST Act, sale through FTWZ units should be considered as interstate supply. However, as per proviso to Section 5(1) of IGST Act, imported goods would be subject to IGST at the point where Customs duty is levied, in this case clearance from FTWZ to DTA which is import of such goods. They stated that if there is no levy of GST on such supplies, they are not liable for registration as per Section 23(1) of CGST Act. The Applicant has stated that there is no clarity on the taxability of sale from the Applicant through FTWZ units to the DTA customers, hence SADESA has sought Advance ruling to clarify the same.

3. The Authorized Representative of the Applicant was personally heard. They stated that the goods will be imported by LSP in the FTWZ. LSP is a unit of FTWZ. However, title of goods do not change and it remains with the Applicant. The Applicant submitted a flow chart of various transactions. They stated that the FTWZ unit imports the goods of the applicant on a free of charge invoice which indicates a nominal value. The goods are finally claimed when a DTA customer

files BOE on invoice raised by the applicant. The FTWZ only acts as clearing and forwarding agent. In view of the above, the applicant wants to clarify whether supply by the applicant to the DTA buyer through FTWZ unit is liable to IGST and also if registration is required for the applicant.

4. The issue before us is to determine the whether supply by the Applicant to DTA buyer through FTWZ unit is liable to IGST under Section 5(1) of IGST Act and whether the Applicant is required to be Registered under GST. In the case at hand, the Applicant stores the goods in the FTWZ for which the LSP in the FTWZ, file 'into bond Bill of Entry' with a nominal value. The Applicant on identifying the purchaser, raise commercial invoice and thereafter the DTA purchaser files the 'ex-bond BOE' for the Commercial Invoice value and pays the appropriate BCD and IGST. The invoice price is paid to the applicant by the DTA purchaser.

4.1 Chapter 7A of the Foreign Trade Policy 2015-2020 states that Free Trade & Warehousing Zones (FTWZ) are a special category of Special Economic Zones with a focus on trading and warehousing. The scheme envisages duty free import of all goods (except prohibited items, arms and ammunitions, hazardous wastes and SCOMET items) for ware housing. As far as bond towards customs duty on import is concerned, the units would be subject to similar provisions as are applicable to units in SEZs. These goods shall also be permitted to be sold in the DTA on payment of customs duties as applicable on the date of such sale. Payment of duty will become due only when goods are sold/delivered to DTA and no interest will be charged as in the case of bonded warehouses. In the present case, the applicant is storing the imported goods in FTWZ which is a Customs bonded warehouse. Now, the applicant has raised the question whether IGST under section 5(1) read with Section 7(2) of the IGST Act on removal of goods from the FTWZ unit i.e. the customs bonded warehouse.

4.2 We find that the above issue has been raised and discussed in the 27th meeting of the GST Council as under:

Agenda Item 5: Clarification regarding applicability of Integrated Goods and Services Tax on goods supplied while being deposited in a warehouse

Goods imported into India are subjected to customs duties and integrated tax under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (hereafter referred to as "CTA"). The importer has the option to defer the payment of duty on such imports by storing the goods in the Customs bonded warehouse. During the storage of imported goods in warehouse, the importer has the option to supply such goods to any other person even before clearance from the bonded warehouse. It has been clarified vide Circular No. 46/2017-Customs dated 24.11.2017 that integrated tax will be payable on such supplies and buyer will also pay the deferred customs duty at the time of clearance of goods from the warehouse. It has been represented that in this scenario, the buyer is being saddled with double taxation.

2. Kind attention is drawn towards sub-section (2) of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") whereby 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, proviso to sub-section (1) of section 5 of the IGST Act provides that 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 such warehoused goods the point of levy would be the point at which 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 goods under section 68 of the Customs Act.

3. Furthermore, sub-section (8A) has been inserted with effect from 31st March, 2018 in section 3 of the CTA vide Section 102 of the Finance Act, 2018 so as to provide that the valuation for the purpose of levy of integrated tax on imported goods deposited in a warehouse, at the time of clearance for home consumption, would be either the transaction value or value as per sub-section (8) of section 3 of the CTA (i.e. valuation done at the time of filing into-bond bill of entry), whichever is higher. It is significant as this amendment takes care of any revenue concerns that might arise on account of non-capturing of value addition happening when the warehoused goods are sold before clearance from warehouse.

4. It is pertinent to mention here that GST Council in its 25th Meeting held on 18th January 2018, has given an in-principle approval to declare the supply of warehoused goods within the Customs bonded warehouse as 'no supply' under Schedule III of the CGST Act, 2017 so as to ensure that no integrated tax is paid at the time of supply of warehoused goods by the importer to the buyer. Since the amendment of the law would take time, it is proposed that such intention/ decision of the GST Council may be effected through a circular.

5. In view of the above, it is proposed that Circular No. 46/2017-Customs dated 24.11.2017 may be rescinded and a fresh circular may be issued clarifying that supply of warehoused goods before their clearance from the warehouse would not be subject to levy of integrated tax and the same would be collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. This clarification would be applicable from 1st of April, 2018. Accordingly, a draft circular as at Annexure-1 is placed for approval of the GST Council.

Accordingly, Circular No.3/1/2018-IGST dated 25th May 2018 was issued re-examining the issues of Circular No. 46/2017 Customs dated 24.11.2017. The Circular clarifies the applicability of IGST on goods supplied while being deposited in customs bonded warehouse effective from 01.04.2018 and states 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, under the provisions of Customs Act. This circular was made applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse on or after 01.04.2018.

4.3 From the foregoing, it is evident that removal from the FTWZ to DTA is the point of deferred levy/payment of Customs Duty, i.e., at the time of clearance for home consumption from FTWZ. Further, as explained in the Circular referred above, the goods are not to be subjected to IGST when bonded and the payment of integrated tax is to be effected when the goods are removed for home consumption from the bonded warehouse, under the Provisions of Customs Tariff Act. Therefore, there is no requirement to pay IGST under the provisions of GST law at the time of clearance from the FTWZ. In the case at hand, the Applicant proposes to effect sale when the goods are bonded and then DTA customer files Bill of Entry for Home Consumption and clears the goods from the FTWZ on payment of appropriate Custom duties (BCD & IGST). Therefore, as clarified in the Circular No.3/1/2018-IGST dated 25th May 2018, the payment of IGST again at the point of clearance from the FTWZ to DTA do not arise for supply of warehoused goods, while being deposited in a customs bonded warehouse/FTWZ on or after 01.04.2018. In the event the Applicant is exclusively conducting the activity described in their Application of exporting goods to FTWZ and which are subsequently sold to Indian customers who clear the same on payment of appropriate customs duties, they are not liable to registration under Section 23(1) of CGST Act and TNGST Act.

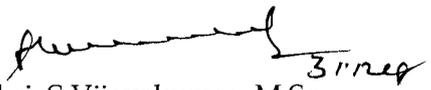
5. In view of the above, we rule as under:

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1. For supply of warehoused goods, while being deposited in FTWZ on or after 01.04.2018, the applicant is not liable to pay IGST at the time of removal of goods from the FTWZ to DTA under the provisions of IGST Act in addition to the duties payable under Customs Tariff Act, 1975 on removal of goods from the FTWZ unit.

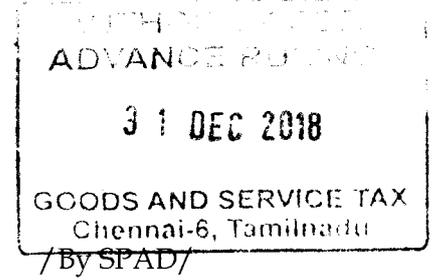
2. On or after 01.04.2018, in the event the Applicant is exclusively conducting the activity described in their application of exporting goods to FTWZ and which are subsequently sold to Indian customers who clear the same on payment of appropriate customs duties, they are not liable to Registration under Section 23(1) of CGST Act and TNGST Act.


Ms. Manasa Gangotri Kata, IRS
Member, CGST


Shri. S. Vijayakumar, M.Sc.,
Member (FAC), TNGST

To

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Copy Submitted to:

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2. The Principal Chief Commissioner of GST & Central Excise,
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