

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG-01/2021

Dated 25/4/2021

PRESENT:

1. Shri Abhishek Chauhan

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri Vivek Arya

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s Coperion Ideal Private Ltd A-35, Ideal House, Sector-64, Noida, UP-201307
2.	GSTIN or User ID	09AACCC3990N1Z4
3.	Date of filing of Form GST ARA-01	27.01.2022
4.	Represented by	Shri Dharnendra Rana, Advocate
5.	Jurisdictional Authority-Centre	Range-14, Division-III Noida
6.	Jurisdictional Authority-State	Sector-Noida Sector-10 Range- Gautam Budh Nagar (B)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes BKID211009008509453

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s Coperion Ideal Private Ltd, A-35, Ideal House, Sector-64, Noida, UP-201307 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AACCC3990N1Z4. The applicant has filed an application for seeking advance ruling in Form GST ARA-01.

2. The applicant has submitted as under-

- (1) It is engaged in design, engineering, fabrication and supply of Pneumatic Coveying System (PCS). PCS is used for transportation of material through pipes from one location to another using air/gas pressure for moving the goods. PCS is interalia constituted of various equipments such as Air Compressors, Rotary Valves, Pipes, Filers and Heat Exchangers.
- (2) The applicant executes contracts regarding design, engineering, fabrication and supply of Pneumatic Coveying System (PCS) and its parts and components.
- (3) Depending upon customers requirement, some of the components are manufactured by applicant or sourced from other domestic sources and then supplied to customers while some components are imported from outside India.
- (4) The applicant supplies the imported components to customers on High Sea Sale (HSS) basis under a HSS contract which is executed while the goods are on high seas i.e. in transit before crossing the customs frontiers of India. Customers clear the imported goods from customs after payment of applicable import duties and GST.

Applicant raises invoice to customers towards such supply of domestic components and for imported components on HSS basis in INR.

3. The applicant has sought advance ruling on following questions as per Form GST ARA-01 -

Whether supply of components of Pneumatic Conveying system by the applicant to its customers on High Sea Sales basis will be treated neither as supply of goods nor as supply of service by virtue of entry 8 to Schedule III of CGST Act.

4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. The applicant have submitted their interpretation of law as under-

(1). Section 7 of the CGST Act defines the term supply in an inclusive manner to interalia include all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.

(2). Section 7(2)(a) of the CGST Act refers to schedule III of the CGST Act which enlists certain activities or transactions that would not be treated as supply for the purpose of GST law.

(3). two new entries were inserted under the schedule III vide Central Goods and Service Tax (Amendment) Act, 2018 as under-

8 (a)

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

(4). Clause (b) of Entry 8, deals with the transaction pertaining to HSS. Hence, imported components sold by the applicant to customers on HSS basis while such components are on high seas would not be considered as a supply of goods or services and accordingly will be outside the purview of GST.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Assistant Commissioner, CGST Division III, Noida forwarded his report vide his letter C.No. V(30)Tech/Misc/Legal/Div III/N/643/2018/114 dated 08.03.2022 wherein following comments were made-

(i) as per the facts submitted by the applicant that the components of the PCS imported by the applicant are sold to the customers on HSS basis while such component are on high sea, the activity is squarely covered by the Entry No. 8(b) to Schedule III of CGST Act after the enactment of the CGST (Amendment) Act, 2018 with effect from 01.02.2019 vide which the said entry was inserted in Schedule III only if the goods are sold to the customers in India who will be finally under obligation to discharge import duty alongwith the applicable IGST at the time of Custom clearance of such goods.

(ii) no proceedings on the question raised in the application is pending or decided under any of the provisions of the Act.

7. The applicant was granted a personal hearing on 12.04.2022 which was attended by Shri Dharnendra Rana, Advocate through video conferencing during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We find that the applicant has sought advance ruling on following questions-

Whether supply of components of Pneumatic Conveying system by the applicant to its customers on High Sea Sales basis will be treated neither as supply of goods nor as supply of service by virtue of entry 8 to Schedule III of CGST Act.

10. First, we proceed to examine as to whether the said question falls under the purview of Section 97(2) of the CGST Act, 2017. In other words, whether question on which advance ruling has been sought is covered in issues mentioned in Section 97 (2) (a) to (g), which is elaborated as below:

SECTION 97.

....

(2) The question on which the advance ruling is sought under this Act, shall be in respect of, —

- (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.

11. We find that the questions for which an advance ruling may be obtained are categorically prescribed under Section 97(2) of the CGST Act, 2017 and no queries other than these would be entertained for advance rulings.

12. We find that CGST Act, UPGST Act and the IGST Act do not define the term high seas. A high sea sale is a sale of goods by a consignee, named in the relevant bill of lading, to another buyer while the goods are en route to their eventual destination. A high sea sale can be made any time after the vessel has crossed the territorial waters of the exporting country but before it enters the territorial waters of the importing country. The taxability on High Sea Sales requires the determination of occurrence of High Sea Sales. The definition of 'import of goods' as per Section 2(10) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the IGST Act, 2017) is as follows-

2(10) "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

13. As such, the import as well as High Sea Sales is determined on the basis of 'place of supply'. The 'place of supply' is not covered by Section 97(2) of the CGST Act, 2017 at all. So, the ruling on matters concerning 'place of supply' is outside the purview of the Authority for Advance Ruling.

14. Further, the question raised in the application for advance ruling falls in Customs domain as high sea sale of goods becomes a part of import transaction of those goods which is taxable in accordance with the provisions of section 3 of Customs Tariff Act, 1975. Moreover, the CBEC had issued a circular No. 33/2017-Cus dated 1.8.2017 wherein it was informed that-

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

5. *The above decision of the GST council is already envisioned in the provisions of sub-section (12) of section 3 of the Customs Tariff Act, 1975 in as much as in respect of imported goods all duties, taxes, cesses etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purpose. ...*

15. In view of the above discussions, we pass an order as follows:

ORDER

The current application is not covered within the scope of Section 97 of the CGST Act, 2017 as such the same is not covered under the ambit of Authority for Advance Ruling. As the questions raised do not fall within the mandate of Authority for Advance Ruling, the application is therefore disposed of as such.

16. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)

Member of Authority for Advance
Ruling


(Abhishek Chauhan)

Member of Authority for Advance
Ruling

To,
M/s Coperion Ideal Private Ltd,
A-35, Ideal House, Sector-64,
Noida, UP-201307

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, C-56/42, Renu Tower, Sector-62, Noida-201309.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-III, C-56/42, Renu Tower, Sector-62, Noida-201309.
5. Through the Additional Commissioner, *Commercial Tax, Gautambudha Nagar, Noida*
Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.