

AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

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

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 02.06.2020 from M/s Sangal Papers Limited, 22Km, Meerut-Mawana Road, Mawana, Distt-Meerut, Uttar Pradesh - Order- Reg.

1) M/s Sangal Papers Limited, 22Km, Meerut-Mawana Road, Mawana, Distt-Meerut, Uttar Pradesh (here in after called the applicant) is a registered assessee under GST having GSTN: 09AACCS4253J2Z5.

2) The Applicant is a limited company engaged in manufacturing of paper out of indigenous and imported waste paper. As regard to the imported waste paper, the applicant has submitted that the Customs duty is paid on the CIF value. Once the paper is manufactured, the applicant shows value of goods and freight separately on the invoice and pays GST on the invoice value.

3) Accordingly, the Applicant has submitted application for Advance Ruling dated 06.02.2020 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with certain annexure and attachments and sought Advance Ruling as follows : –

- i. *When GST has been paid on the freight in the case of indigenous supplies, whether the supplier is required to pay again GST on the freight under RCM.*
- ii. *When the GST has been paid on the ocean freight in the case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability is there under RCM.*

4). The applicant further submitted that the waste paper is imported from various countries and if the Customs Duty is paid on the CIF value there should not be levy of any tax on the ocean freight under the reverse charge mechanism as it would be tax neutral and tantamount to double taxation. Similarly, in the case of supply of manufactured paper, the applicant has submitted that they separately charge freight in the sale invoice, in addition to the value of paper, and discharge appropriate GST on the same. They further submitted that once

the GST is discharged there should not be any further levy on the said freight under Reverse Charge Mechanism as it would tantamount to double taxation.

5). As per the declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending in any proceedings nor decided in any proceedings in the applicant's case under any of the provisions of the ACT.

6). The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. The jurisdictional GST officer, in its report has submitted that:-

i. In case supply of service by a GTA, the recipient of the service will be one only and if the supplier has availed the service on behalf of the buyer and are covered under the category of recipient of service in term of column 4 of table, he has to pay tax. In that case, the buyer of the goods does not appears to have availed the service of GTA.

ii. As regard, second question is concerned, there are judgments of Hon'ble High Court of Gujrat and other High Courts which are self explanatory and no comments can be offered at this stage.

iii. As per records no case/enquiry/investigation on such issue are pending against the applicant at present.

7). The applicant was granted a personal hearing in the matter. In compliance, Sh. R.C. Gupta, Advocate/ Authorized representative, attended the virtual hearing online on 26.06.2020 on behalf of the applicant. During the personal hearing he reiterated the submissions already made vide application dated 6th February 2020 and sought a few days time to submit additional written submission. Accordingly, vide his email dated 29.06.2020 he submitted that:-

i. Insurance and freight are added to the value of the goods and the GST is paid as a composite supply accordingly there should not be further requirement for payment of the GST under the RCM as it would tantamount double taxation.

ii. under the Transaction Value definition in the parent Act when the cost of transportation is added to the value of the goods and the GST has been paid therein, there is no further requirement for the payment of GST under RCM.

iii. As regard to the ocean freight the applicant, citing the judgment passed by the Hon'ble High Court of Gujrat, in the case of M/s Mohit Minerals Pvt. Ltd. Vs Union Of India, submitted that the Ocean Freight is not liable to GST under any circumstances whatsoever these may be.

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 to the earlier, henceforth 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 have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(e) of the CGST Act 2017 being a matter related to determination of the liability to pay tax on any goods or services or both. We therefore, admit the application for consideration on merits.

10). We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the questions before us to decide is to whether:-

- i. When GST has been paid on the freight in the case of indigenous supplies, whether the supplier is required to pay again GST on the freight under RCM.
- ii. When the GST has been paid on the ocean freight in the case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability is there under RCM.

11). We observe that levy of tax under reverse charge mechanism is in terms of Section 5(3) of the IGST Act, 2017 and Section 9(3) of the CGST Act, 2017. As per Section 5(3) of the IGST Act, 2017:-

"5(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both".

Similarly, Section 9(3) of the CGST Act, 2017 reads as below:-

"9(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on

which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."

12). Now coming to the first question regarding liability of GST on the freight paid on indigenous supply, we observe that, vide Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (as amended) the Central Government has notified the certain category of person liable to pay tax under reverse charge basis. As per this Notification the tax liability on the goods transport agency service is to be discharged under the reverse charge mechanism, in case the service recipient falls under the specified category.

As per entry no. 01 of the said Notification:-

SL. No.	Category of Supply of Services	Supplier of service	Recipient of service
1	<p>Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to-</p> <ul style="list-style-type: none"> a. Any factory registered under or governed by the Factories Act, 1948(63 of 1948);or b. any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or c. any co-operative society established by or under any law; or d. any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or e. any body corporate established, by or under any law; or f. any partnership firm whether registered or not under any 	Goods Transport Agency (GTA)	<ul style="list-style-type: none"> a. Any factory registered under or governed by the Factories Act, 1948(63 of 1948);or b. any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or c. any co-operative society established by or under any law; or d. any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or e. any body corporate established, by or under any law; or

	<p>law including association of persons; or</p> <p>g. (g) any casual taxable person.</p>		<p>f. any partnership firm whether registered or not under any law including association of persons; or</p> <p>g. any casual taxable person, located in the taxable territory.</p>
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13). As regard to the applicant's case we observe that the applicant is a limited company incorporated under the Companies Act and engaged in the manufacturing and supply of the paper. Hence, the Notification No. 13/2017-CT (Rate) dated 28.06.2017 (as amended) is squarely applicable on them and they are liable to pay the GST on the freight paid, under the reverse charge mechanism. As far as double taxation is concerned, we observe that this is a revenue neutral exercise, having no additional financial impact on the applicant. We also observe that as per the mandate provide to the Advance Ruling Authority, under Section 97 of the CGST Act, 2017, the Authority has to decide specific issues, as specified under Section 97(2) of the CGST Act, 2017, on the basis of existing Law/Rules/Notifications/Circulars. The Authority cannot venture outside its purview and give rulings on the issue which are not under its mandate. Accordingly, we observe that the matter of double taxation is outside the purview of the Authority and Authority cannot give any ruling on the same.

14). Now coming to the second question i.e. *"When the GST has been paid on the ocean freight in the case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability is there under RCM"*, we observe that the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (as amended), issued in terms of Sub-Section (3) of Section 5 of the IGST Act, 2017, specifies the person liable to pay tax under reverse charge mechanism.

We find that the services supplied by the foreign shipping entity of transportation of goods in a vessel to a port in India is an 'inter-state supply' in terms of section 7 of the IGST Act, 2017. Hence, IGST is leviable on the same under Section 5 of the IGST Act. As per the charging section i.e. Section 5, IGST has to be paid by the taxable person.

15). The Entry No. 10 of the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (as amended) reads as under:-

SL. No.	Category of Supply of Services	Supplier of service	Recipient of service
10	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

Thus, in terms of the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (as amended), in the case of import of goods on CIF basis, the applicant is liable to pay GST on the component of Ocean freight paid by the foreign supplier to the shipping company.

16). We also observe that similar views have been observed by the Authority for Advance Ruling for Uttarakhand, vide Advance Ruling No. 03/2018-19 dated 04.05.2018, in the case of M/s Bhal Paper Mills Ltd. In the instant case the Authority has observed that *"....Therefore as on date, even if the importer has already paid IGST on CIF value imported goods, he is still required to pay IGST on ocean freight."*

17). Similarly, in the case of M/s Chambal Fertilizers and Chemical Limited, the Rajasthan Authority for Advance Ruling Under GST, in its Order No. RAJ/AAR/2018-19/14 dated 25.08.2018 has observed that *"...The applicant is liable to pay IGST on transportation of goods by vessels under Reverse Charge Mechanism (RCM) under Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017"*.

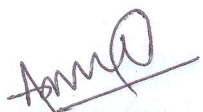
In view of the above, both the members unanimously rule as under;

RULING

Ruling on Question 1. In term of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (as amended) the applicant is liable to pay GST under reverse charge mechanism, on the freight paid.

Ruling on Question 2. The applicant is liable to pay IGST on transportation of goods by vessels under Reverse Charge Mechanism (RCM) under Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017, as amended.

18). 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.



(Ajay Kumar Misra)

Member of Authority for Advance
Ruling



(Dinesh Kumar Verma)

Member of Authority for Advance
Ruling

To,
M/s Sangal Papers Limited,
22Km, Meerut-Mawana Road,
Mawana, Distt-Meerut,
Uttar Pradesh.

AUTHORITY FOR ADVANCE RULING – UTTAR PRADESH

Order No. 63

Date: 10.07.2020

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 & CX, Meerut Commissionerate, Uttar Pradesh.
4. The Deputy Commissioner, CGST & Central Excise, Division-II, Muzaffar Nagar, for information;
5. Through the Additional Commissioner, Grade-1, Commercial Tax, Meerut Zone, Meerut, 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.