

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

ADVANCE RULING NO. UP ADRG 91/2022

Dated 03/01/2022

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 Shashi Metals Private Ltd C-78/5, BS Road Industrial Area, Ghaziabad-201009
2.	GSTIN or User ID	09AAJCS7206E1ZB
3.	Date of filing of Form GST ARA-01	06.10.2021
4.	Represented by	Shri Rahul Garg, Director Shri Arvind Kr. Agarwal, Advocate
5.	Jurisdictional Authority-Centre	Range-14, Division-III Ghaziabad
6.	Jurisdictional Authority-State	Sector-Ghaziabad sector-17 Range- Ghaziabad (C)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes UTIB21090900101144

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

1. M/s Shashi Metals Private Ltd., C-78/5, BS Road Industrial Area, Ghaziabad-201009 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAJCS7206E1ZB.

2. The applicant has submitted as under-

- (1) The applicant is Private Limited Company and registered dealer having registration no. 09AAJCS7206E1ZB.
- (2) It is engaged in trading business of Iron & Steel as defined under Chapter 72 (HSN code) on wholesale and retail business.
- (3) The applicant has received purchase order for supply of Iron & Steel from M/s Dewan India, Plot No. J-05, Pocket-B, 6th KM., Pakbara-Dingrapur, Road, Moradabad, Uttar Pradesh-244102, which is also registered under registration no. 09AAFFD9861KZU.
- (4) The manufacturing unit of M/s Dewan India is approved SEZ unit as defined under section 2(19) of the Integrated Goods and Service Tax Act, which is situated at Moradabad Special Economic Zone having the LOA No. NSEZ/4-304/2003-MBD/4500 dated 20.12.2010. As per LOA M/s Dewan India is approved to manufacture and export of following:-

ITC (HS) Codes	Descriptions
73239190,73269090	Handicrafts of Iron
74199930	Handicrafts of Brass
76151030	Handicrafts of Aluminium
74199940	Handicrafts of Copper
70200090, 70200029,70200011, 70133700, 70181020	Handicrafts of Glass
44209090,44209010, 44201000	Handicrafts of Woods

(5) The applicant is supplying Iron and Steel having HSN Code 72 which is used as raw material by M/s Dewan India to manufacture its approved Items. Their supplies made to M/s Dewan India is Zero-rated supplies as defined under Section 16 of Integrated Goods And Service Tax Act, 2017. As such no Integrated Goods and Service Tax is levied in tax invoice raised by the company to recipient of goods because all the supplies are made against Letter of Undertaking.

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

1. Whether supply of Iron and Steel (HSN Code: Chapter 72) to M/s Dewan India, Moradabad for manufacturing as raw material of its items approved by the Government of India, Ministry of Commerce and Industry Department of Commerce, Moradabad Special Economic Zone, Moradabad will fall under supply for approved purpose?
2. Whether supply of Applicant Company will be treated as "Zero Rated Supply" within the meaning of Section 16(1) of the Integrated Goods And Service Tax Act, 2017. Zero Rated Supply is defined u/s 16(1) of the Integrated Goods and Service Tax Act,2017 which runs as under.
"Zero rated supply means any of the following supplies of goods or services or both, namely-
 - a) Export of goods or services or both or
 - b) Supply of goods or services or both(for authorised operations) to Special Economic Zone developer or a special Economic Zone Unit.
3. Is applicant company is entitled to claim refund on Inputs, if supplies are made without payment of tax against Letter of Undertaking? A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or serviced or both without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Act or Rules made there under.
4. Whether Applicant Company can be held liable for any penalty or tax if supplies made by him to M/s Dewan India, Moradabad are consumed used by recipient for any purpose other those mentioned in its LOA (i.e approved purpose)?.
5. Documents required to be maintained by the applicant.
6. Is there any liability on Applicant Company under Reverse Charge Mechanism (RCM)?.

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. Proviso to Rule 46 of CGST Rules, 2017 states that:-

“Provided also that in the case of the export of goods or services, the invoice shall carry an endorsement “SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX” or “SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX”,

It means that every registered person making supplies to SEZ unit/ developers is required to raise invoice with the following:-

- a. Supplies under Bond/ LUT:-*SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX.*
- b. Supplies with payment of IGST:- *SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX*
2. The supplies made by the applicant is Iron and Steel which is used as raw material by the recipient. Hence the supplies are made for the authorised operations and the benefit of Zero rated supply is available to the supplier.

3. Section 16(1) states that:-

(1) “zero rated supply” means any of the following supplies of goods or services or both, namely:- (a) export of goods or services or both; or

(b) supply of goods or services or both 1[for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person making zero rated supply of goods shall, in case of nonrealisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

4. Rule 96A of CGST Rules, 2017 prescribes the procedure to be followed for zero-rated supplies under bond or letter of undertaking which requires the supplier to furnish a bond or Letter of Undertaking (LUT) before making such supply binding himself to pay tax dues along with interest within a period of
 - a). 15 days after expiry of 3 months or further period extended by Commissioner from the date of invoice for export, if goods are not supplied
 - b). 15 days after expiry of 1 year or further period extended by Commissioner from the date of invoice for export, if payment of such service is not received

by the supplier in foreign exchange or Indian rupees wherever permitted by RBI.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Additional Commissioner Grade-1, Commercial Tax, Ghaziabad Zone Second forwarded report of the Deputy Commissioner, Commercial Tax, Sector-17, Ghaziabad vide his letter No. 1189/ Vi. Anu. Sha./Adi. Comm. Gra.1 Va. Ka. Ga. Bad Zo. Dwi. Ga. Bad dated 23.10.2021 wherein following comments were made-

- (i) the benefit of zero rated supply is admissible to the applicant for supply of iron and steel.
- (ii) as per Section 16 (1) of IGST Act and Section 54 of the CGST Act, refund of input tax credit is admissible.
- (iii) As per Rule 96A of CGST Rules, in case of non-export of goods related to zero-rated supply, there is provision of payment of tax along with interest.
- (iv) there is no proceedings pending against the applicant at present.

7. The applicant was granted a personal hearing on 27.12.2021 which was attended by Shri Rahul Garg, Director and Shri Arvind Kr, Agarwal, Advocate during which they reiterated the submissions made in the application of advance ruling and also furnished copy of case law of Hon'ble Kerla High Court dated 06.12.2019 in case of Range Forest Officer vs Lalitha Muraleedharan.

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-

1. *Whether supply of Iron and Steel (HSN Code: Chapter 72) to M/s Dewan India, Moradabad for manufacturing as raw material of its items approved by the Government of India, Ministry of Commerce and Industry Department of Commerce, Moradabad Special Economic Zone, Moradabad will fall under supply for approved purpose?*
2. *Whether supply of Applicant Company will be treated as "Zero Rated Supply" within the meaning of Section 16(1) of the Integrated Goods And Service Tax Act, 2017. Zero Rated Supply is defined u/s 16(1) of the Integrated Goods and Service Tax Act, 2017 which runs as under.*

"Zero rated supply means any of the following supplies of goods or services or both, namely-

 - a) Export of goods or services or both or*
 - b) Supply of goods or services or both (for authorised operations) to Special Economic Zone developer or a special Economic Zone Unit.*
3. *Is applicant company is entitled to claim refund on Inputs, if supplies are made without payment of tax against Letter of Undertaking? A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax*

credit on supply of goods or serviced or both without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Act or Rules made there under.

4. *Whether Applicant Company can be held liable for any penalty or tax if supplies made by him to M/s Dewan India, Moradabad are consumed used by recipient for any purpose other those mentioned in its LOA (i.e approved purpose)?.*
5. *Documents required to be maintained by the applicant.*
6. *Is there any liability on Applicant Company under Reverse Charge Mechanism (RCM)?.*

10. Before deciding the questions raised by the applicant, we proceed to examine as to whether the said questions pertain to matters or questions specified in Section 97(2) of the CGST Act, 2017. As per Section 97(2) of CGST Act, the questions on which advance ruling is sought under this Act, shall be in respect of, matters or issues mentioned in Section 97 (2) (a) to (g) only 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.

11.1 We find that the questions for which an advance ruling may be obtained are categorically prescribed and no queries other than these would be entertained for advance rulings. Now, we proceed to discuss the questions raised by the applicant.

11.2 The applicant vide question No. 1 is desirous to know as to whether supply of Iron and Steel to M/s Dewan India, Moradabad for manufacturing of its items approved by the Government of India, Ministry of Commerce and Industry Department of Commerce, Moradabad Special Economic Zone, Moradabad will fall under supply for approved purpose. The said question (i.e. whether any supply will be covered in supply to SEZ unit for approved purpose) is not covered in any category under Section 97(2) of the CGST Act, 2017.

11.3 The applicant vide question No. 2 is desirous to know as to whether supply of Applicant will be treated as Zero Rated Supply. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

11.4 The applicant vide question No. 3 is desirous to know as to whether the applicant is entitled to claim refund on Inputs, if supplies are made without payment of tax against Letter of Undertaking. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

11.5 The applicant vide question No. 4 is desirous to know as to whether the applicant can be held liable for any penalty or tax if supplies made by him to M/s Dewan India, Moradabad are consumed used by recipient for any purpose other those mentioned in its LOA. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

11.6 The applicant vide question No. 5 is desirous to know the Documents required to be maintained by the applicant. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

11.7 The applicant vide question No. 6 is desirous to know as to whether there is any liability on Applicant Company under Reverse Charge Mechanism. The clause (a) of Section 95 of the CGST Act defines 'advance ruling' as under:-

(a) "Advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

11.8 From the above definition of advance ruling, it is evident that an applicant can seek an Advance Ruling only in relation to supply of goods or services or both undertaken or proposed to be undertaken by them. Accordingly, the question on tax liability under reverse charge mechanism is not liable for admission before the authority of advance ruling.

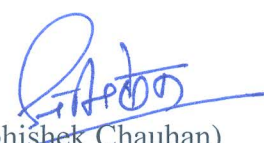
12. In view of the above discussions, we pass an order as follows:

ORDER

This Authority is of opinion that 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.

13. 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 Shashi Metals Private Ltd.,
C-78/5, BS Road Industrial Area,
Ghaziabad-201009

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, CGO Complex II, Kamla Negru Nagar, Ghaziabad-201002.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-III, CGO Complex II, Kamla Negru Nagar, Ghaziabad-201002.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Zone 2, Ghaziabad, 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.