THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 97/ 2019
Date : 27-09-2019

Present:

1. Sri. Harish Dharnia,
   Addl. Commissioner of Central Tax, ... Member (Central Tax)

2. Dr. Ravi Prasad M.P.
   Joint Commissioner of Commercial Taxes . . . . Member (State Tax)

1.	Name and address of the applicant	M/s M.K. Agro Tech Pvt. Ltd., No.194, Kaveri Layout, Ground Floor, M.B.Road, Shrirangapatna, Mandya District, Karnataka - 571438
2.	GSTIN or User ID	29AADCM7734K1ZZ
3.	Date of filing of Form GST ARA-01	13.05.2019
4.	Represented by	Sri Dayananda K, Chartered Accountant
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Mysore Commissionerate, Mysuru.
6.	Jurisdictional Authority – State	LGSTO-215, Mandya.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 vide CIN SBIN19052900012991 dated 09.05.2019 & Rs.5,000-00 under KGST Act 2017 vide CIN SBIN19042900458089 dated 30.04.2019

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

1. M/s M.K.Agro Tech Pvt. Ltd., (called as the 'Applicant' hereinafter), having GSTIN number 29AADCM7734K1ZZ, have filed an application for Advance Ruling under Section 97 of the CGST/KGST Act, 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether under Reverse Charge Mechanism, IGST should be paid by the importer on ocean freight on the case of CIF basis contract?

3. The applicant furnishes some facts relevant to the stated activity:

a. The applicant states that they are into the business of supplying edible oil and they import edible grade Crude Oil without any separate charges for transportation from other countries to Indian port on CIF basis. When it enters the Indian Port, Basic Customs Duty and applicable Cess along with IGST is paid.

b. Section 15 of the Customs Valuation Rules provides for the value to be considered for imposing the Basic Customs Duty. The applicable rule reads as under:

As per Rule 10(2) Customs Valuation (Determination of Value of Import Goods) Rules, 2007,

"The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –
(a) The cost of transport of the imported goods to the place of importation
(b) . . . . .; and
(c) . . . .
Provided that –
(i) Where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty percent of the free on board value of the goods
Provided also that where the free on board value of the goods is not ascertainable the costs referred to in clause (a) shall be twenty percent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii)."

In view of the above, the applicant states that it can be concluded that for the valuation of basic customs duty, cost of transportation is to be included.

c. Section 7(2) of the IGST Act 2017 provides that import of goods shall be deemed as "inter-State" supplies and accordingly integrated tax shall be levied in addition to the applicable customs duties.

d. The levy of tax on the import of goods has been provided under a proviso to section 5 of the IGST Act, 2017 which reads as under:

"Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962."

e. The above proviso states that levy of IGST is to be in accordance with section 3 of the Customs Tariff Act, 1975 and the valuation for the purpose of taxation shall be as determined by the Customs Tariff Act itself. Therefore,

the applicant states that it is necessary to refer to the relevant section 3 of the Customs Tariff Act, 1975.

f. Section 3(7) and Section 3(8) of the Customs Tariff Act, 1975 were substituted w.e.f. 01.07.2017 by section 4 of the Taxation Laws (Amendment) Act, 2017 (No.18 of 2017) to accommodate for IGST taxation. The substituted provisions read as under:

> *"**3(7)** Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.*
>
> ***3(8)** For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of – (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section."*

g. From the combined reading of the above provisions, it can be deduced that IGST is to be charged on the value of import of goods. Also, it is provided that the value of the goods for the purpose of levying integrated tax shall be assessable value as ascertained under section 14(1) of the Act, which also includes the cost of transportation. Further, it also includes the cost of transportation. Further, it is also includes Customs Duty levied under the Act, and other duty chargeable on the said goods under any law for the time being in force.

h. In the instant case, the applicant states that for the purpose of valuation of goods for customs and IGST, CIF value is to be considered which is inclusive of the freight element. The freight element of the import of goods has been subjected to IGST when the goods reach the Customs frontier itself. As per the provisions of Notification 10/2017 – Integrated Tax (Rate), the importer is liable to pay IGST even if the import is under FOB basis. Even import under FOB, Customs duty including IGST is payable on such imports and again IGST is payable under Notification No.10/2017 – Integrated Tax (Rate) leading to payment of IGST twice on the same element.

i. The applicant draws the attention to the Notification No.8/2017 – Integrated Tax (Rate) dated 28.06.2017 which notifies various services to be covered

within the scope of IGST. Serial No.9 of the said Notification is particular is reproduced for ready reference:

"Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India."

The above service is subject to IGST @ 5% subject to certain conditions.

j. Section 5(3) of the IGST Act, 2017 empowers Central Government to notify the category of supply of services on which tax shall be payable under reverse charge by the "recipient of supply". The above has been issued vide Notification No.10/2017- Integrated Tax (Rate) dated 28.06.2017. The relevant entry applicable to the applicant has been reproduced as under:

"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".
The services recipient in the above case, shall be the importer.

k. The above notification categorically shifts the payment of tax from the supplier to the "recipient" of supply. However with reference to the point no.10 of the notification, the recipient of supply is referred to as the "importer" and he shall be subject to reverse charge mechanism. The coverage of the term "recipient" of supply is provided in section 2(93) of the CGST Act, 2017 and the same is provided as under:

"(93) "recipient of supply of goods or services or both, means –

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied."

l. As can be seen from the above, it is an inclusive definition and there is no provision provided anywhere in the Act to expand its coverage either. Where consideration is payable, he will be the recipient. In the appellant's case, the supplier enters into an agreement with the Foreign Shipping Company and the due consideration is paid by them only. Applying the above definition in

the appellant's case, the recipient of supply shall be the exporter itself. However, the said notification has specified the 'importer' as the 'recipient' of supply which is not in line with the definition or act and therefore in the opinion of the said entry is ultra vires to the provisions of the Act and therefore RCM should not be imposed on the importer.

m. Without prejudice to the above, the appellant provides further submissions on the assumption that the Importer is infact the 'recipient' of supply. Combined reading of the above two entries of the IGST notifications and applying them to the applicant's case, it is interpreted that on the services of transportation availed at the time of import of goods, i.e. Ocean Freight, the applicant shall be subject to RCM (IGST) at the rate of 5%. However, in cases like CIF value, where there is no bifurcation of the freight value, the notification is silent to this respect of valuation. In this regard, the Corrigendum to Notification No. 8/2017 – Integrated Tax (Rate) dated 28.06.2017 vide F.No.334/1/2017- TRU dated 30.06.2017 issued, which reads as under:

The following insertion has been made:

"Where the value of taxable service provided by a person located in non-taxable territory to 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 is not available with the person liable for paying integrated tax, the same shall be deemed to be 10% of the CIF value (sum of cost, insurance, and freight) of imported goods."

n. With the above readings, if the actual value of ocean freight is not known, it is to be noted that IGST is to be charged at 5% on 10% of the CIF value. However this optional valuation is not available when the transportation is made through aircraft or road transport even if the imports are made on CIF basis.

o. The appellant states that Section 2(30) of the CGST Act, 2017 which defines the "composite supply"

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply."

p. The import of goods on CIF basis includes import of goods along with services such as insurance and freight which are naturally bundled together in the ordinary course of business, therefore falls within the definition of 'composite supply'. The principal supply is defined under section 2(90) of the CGST Act, 2017 as under:

"section 2(90) - "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary."

Inferring from the above definitions, the principal supply in the appellant's scenario shall be the import of goods which forms a predominant element of the composite supply and insurance, freight being ancillary services provided. Further section 8 of the CGST Act provides for the computation of tax liability on composite supply. The section reads as under:

"Section 8. Tax liability on composite and mixed supplies. – The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :-

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

q. In line with the provisions, while importing the goods, IGST is applied at the rate of tax as is applicable on the principal supply, i.e. 5%. Having fulfilled the requirement of the levy provision on composite supply, the question of splitting of the composite supply and separately levying tax on one of its supply of service; i.e. freight, again is nowhere provided in the Act.

r. In view of the above submissions, the applicant states that it is justified to conclude that the tax implication on the freight element is not only subject to IGST under the provisions of the Customs Tariff Act 1975 as "import of goods" but subsequently the freight element is also subjected to IGST @ 5% as import of services therefore leading to double taxation of the same component. The applicant is of the view that the GST has been introduced with the main focus to eliminate double taxation, however in such transactions, unavoidably IGST is taxed twice, thereby defeating the intention of the law. Therefore, the applicant is of the view that there is no requirement to pay IGST again under section 5(3) of the IGST Act read with the notification no 10/2017- Integrated Tax (Rate).

s. Based on the submissions made with regard to the authenticity of the notification itself, and further submissions, the applicant has sought advance ruling on whether IGST needs to be paid at 5% under reverse charge mechanism when the same component is already subject to IGST during import itself and paid IGST under section 3(7) read with 3(8) of the Customs Tariff Act read with Section 14(1) of the Customs Act.

PERSONAL HEARING: / PROCEEDINGS HELD ON 21.08.2019.

4. Sri. Dayananda K, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 21.08.2019 &

reiterated the facts narrated in their application and also submitted copies of judgements that they intend to rely on.

5. **FINDINGS & DISCUSSION:**

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Dayananda K, C.A. and authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

5.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 provisions under the KGST Act.4.

5.3 The issues involved are examined. The Entry No. 9(ii) of Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017 reads as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
9	Heading 9965 (Goods Transport Services)	(ii) Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India	5	Provided that credit of input tax charged on goods (other than on ships, vessels, including bulk carriers and tankers) used in supplying the service has not been taken Explanation: This condition will not apply where the supplier of service is located in non-taxable territory. [Please refer to Explanation no.iv]

5.4 It is not disputed by the applicant that the transaction is liable to tax under, entry no. 10 of Notification No.10/2017 – Integrated Tax (Rate) dated 28.06.2017, reverse charge mechanism. The said entry 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

In the instant case, the importer in India is liable to pay the tax under RCM as they are deemed to be the recipient of service liable to tax under RCM and applicant has no dispute on the leviability of tax under these notifications.

5.5 It is pertinent to note that this is the tax liable to be paid on the supply of services related to transportation of goods and is not on the supply of goods.

5.6 The valuation of the supply of goods involved in the imports is inclusive of the value of transportation service. The consideration relating to transportation of goods in case of import of goods is a part of the value of goods as per rule 10(2) of the Customs Valuation (Determination of Value of Import of Goods) Rules, 2007. However, the taxable event is the import of goods into the territory of India and the valuation of the turnover of import of goods on which such tax shall be levied is as per the provisions of the Customs Act. Therefore it is clear from the above that this tax is on the import of goods and not on the services. Hence there is no double taxation involved in the above transactions as these are two distinct taxable transactions, one relating to supply of goods and other relating to supply of services.

5.7 However, this issue is sub-judice as the same issue is pending before the Hon'ble High Court of Gujarat and this ruling is subject to the outcome of the decision of the Hon'ble Court.

6. In view of the foregoing, we pass the following

RULING

Subject to the final decision in the issue by the Hon'ble Court, it is ruled that IGST should be paid by the importer on ocean freight in case of CIF basis contract, under Reverse Charge.

27.09.2019

(Harish Dharnia)
Member

(Dr.Ravi Prasad.M.P.)
Member

Authority For Advance Rulings Karnataka

Place: Bengaluru,
Date: 27.09.2019

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Mysore Commissionerate, Mysuru.
4. The Asst. Commissioner, LGSTO-215, Mandya.
5. Office Folder