

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

Members present are:

1. *Senthil Nathan S, IRS*
Joint Commissioner,
Office of the Commissioner of Central Tax & Central Excise, Thiruvananthapuram.

2. *N. Thulaseedharan Pillai.*
Joint Commissioner (General),
Office of the Commissioner of State Taxes, Thiruvananthapuram

Sub:- GST Act, 2017 - Advance Ruling U/s 98 - liability to tax under GST Act - Orders issued.

Read:-Application dtd. 29.01.2018 from M/s. Synthite Industries Ltd., Ekm

ORDER No. CT/2275/18-C3 DATED 26/03/2018

1. M/s Synthite Industries Ltd, Synthite Valley, Kadayiruppu P O, Kolenchery, Ernakulam District, Kerala - 682311 (hereinafter called the applicant) is a registered person under GST having GSTN: 32AADCS5616E1ZQ.

2. They are in the business of trading in spices and spice products. They have two modes of transactions. In the first kind, the applicant receives order from a customer in USA for the supply of spice products. They place a corresponding order to a supplier in China for supplying the goods ordered by the customer in USA. The supplier in China, based on the request of the applicant, ship the goods directly to the customer in USA. In other words, the goods do not come to India. The Chinese supplier issues invoice to the applicant, for which, payment will be made by the applicant in due course. Subsequently, the applicant will raise invoice on the customer in USA, and collect the proceeds.

3. In the other mode of transaction, the applicant is availing storage facility in the form of a presidential warehouse in Netherlands for storing their products and subsequent delivery to their customers in and around Netherlands. The storage facility is open to all, and interested entities across the globe can keep their products there by paying applicable storage rent. The applicant is availing a portion of the storage facility as and when required. They use the facility for quick and timely delivery of their products to their customers based on demand. When an order is received from the customer by the applicant, they can immediately deliver the products from this warehouse and this reduces the freight expenses and delay in delivery. These types of transactions are legally permitted and they have obtained necessary permission from Reserve Bank of India. The applicant wants to buy materials from a company in China in bulk and store it in the presidential warehouse in Netherlands for subsequent delivery to various customers in and

around the country as small and medium lots based on demand. The material is not coming to India at any point. The Chinese supplier will invoice the applicant for which payment will be given in due course. Subsequently, the warehouse authorities will arrange split deliveries to their various overseas customers as per their instructions. The applicant would issue invoice to the ultimate customers and collect the proceeds in foreign exchange.

4. The applicant in his application dated 29.01.2018 has raised following issues for determination by the Authority;

1. Whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them?
2. On the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them?
3. On procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them?
4. On the sale of goods from Netherlands warehouse to their end customers in and around Netherlands, without entering India, is GST payable by them?

5. On scrutiny of the application, it was found that applicant had only paid a fee of Rs.5000/- whereas the applicant was required to pay a fee of Rs.5,000/- each under the CGST and SGST Rules.

6. The applicant was granted a personal hearing on 13.03.2018. Shri. George Varghese, Senior Manager (Finance) appeared on behalf of the applicant. He submitted proof of payment of the balance fee of Rs:5,000/-. In the written submission, dated 13.03.2018, the applicant has submitted that they are engaged in the manufacture and export of spice oils and oleoresins from India from 1972 and their annual turnover is more than Rs.1500 crores. They have export trading house status granted by the Ministry of Commerce and Industry, Government of India. They mainly purchase spices such as pepper, ginger, cardamom, nutmeg, chillies, turmeric, etc as raw materials and extract them with solvents / chemicals to produce spice oleoresins. They are having manufacturing facilities at Kerala, Tami Nadu, Karnataka and Andhra Pradesh. The applicant submitted that around 80% of their turnover is from exports and the foreign customers place order for various products.

7. The applicant also submitted copies of the purchase order issued by them to the Chinese supplier; the Invoice issued by the Chinese supplier; the Bill of Lading from China to USA and the invoice issued by the applicant to their customer in USA.

8. On the basis of the facts disclosed in the application, the oral and written submissions made at the time of personal hearing and the documents produced during the personal hearing, it was decided to admit the application.

9. As per Section 2(10) of the Integrated Goods and Services Tax Act, 2017, "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

As per sub-section (2) of Section 7 of the Integrated Goods and Services Tax Act, 2017, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce.

Sub - section (1) of Section 5 of the Integrated Goods and Services Tax Act, 2017 states that, subject to the provisions of sub - section (2), there shall be levied a tax called the integrated goods and services tax in all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the Central Goods and Services Tax Act, and at such rates, not exceeding forty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person;

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 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.

10. The Customs Tariff Act, 1975 was amended by The Taxation Laws Amendment Act, 2017 by introducing sub-section (7) in Section 3 of the Customs Tariff Act, 1975 with effect from 01.07.2017 to enable collection of integrated tax on the goods imported. The relevant provisions of the amended Section 3 of the Customs Tariff Act, 1975 reads as follows;

"(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).

(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 (52 of 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 (9).

(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.

The relevant provisions of the Customs Act, 1962 are reproduced below;

SECTION 12.: Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

SECTION 15.: Date for determination of rate of duty and tariff valuation of imported goods. - (1) Rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

From a combined reading of the above provisions of the IGST Act, 2017, the Customs Tariff Act, 1975, and the Customs Act, 1962, it is evident that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e.-on the date determined as per provisions of Section 15 of the Customs Act, 1962.

11. When a question regarding the leviability of Integrated Goods and Services Tax [IGST] on High Sea Sales of imported goods and point of collection thereof was raised before the Central Board of Excise and Customs [CBEC], the CBEC by Circular No. 33/2017-Customs dated 01.08.2017 had clarified as follows;

Subject: Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof - regarding.

*Reference has been received in the Board regarding clarity on **Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods.***

2. The issue has been examined in the Board. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale. In the past, CBEC has issued various instructions regarding high sea sales appropriating the contract price paid by the last high sea sales buyer into the Customs valuation [Circular No. 32/2004-Cus dated 11-5-2004 refers]

*3. As mentioned earlier, all **inter-state transactions are subject to IGST.** High sea sales of imported goods are akin to **inter-state transactions.** Owing to this, it was presented to the Board **as to whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under sub-section (7)***

of section 3 of Customs Tariff Act, 1975 and also separately under Section 5 of The Integrated Goods and Services Tax Act, 2017.

4. GST council has deliberated the levy of Integrated Goods and Services 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 the customs clearance purposes 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 Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, cess, 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 purposes. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

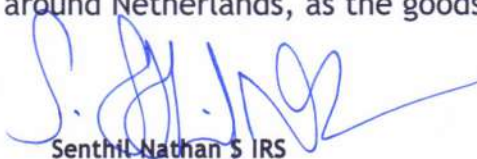
12. The clarification given by the CBEC in the above Circular regarding the leviability of IGST and the point of collection thereof in respect of high sea sales of imported goods is, mutatis mutandis, applicable in the case of the applicant.


13. In view of the above, we rule as under;

RULING

The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India.

The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point.


Senthil Nathan S IRS
Member, CGST


N. Thulaseedharan Pillai
Member, SGST

To

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