

## MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

### BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	GSTIN-27AAACS0730L1ZG User Id - 271800000632ARR	
Legal Name of Applicant	M/S. SPACEAGE SYNTEX PVT LTD	
Registered Address/ Address provided while obtaining user id	7, NAVKETAN IND ESTATE, MAHAKALI CAVES ROAD, ANDHERI EAST, MUMBAI-400093.	
Details of application	GST-ARA, Application No. 13 Dated 18.04.2018	
Concerned officer	Commissionerate of CGST/CX, Mumbai East, Mumbai	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Retail Business
B	Description (in brief)	Retail Trading in Export Licenses such as DFIA/DFRC etc.
Issue/s on which advance ruling required	(v) determination of the liability to pay tax on any goods or services or both	
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.	

### PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/S. SPACEAGE SYNTEX PVT LTD., the applicant, seeking an advance ruling in respect of the following question.

*Whether GST is applicable on Sale and /or Purchase of DFIA licenses?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

#### **02. FACTS AND CONTENTION - AS PER THE APPLICANT**

##### Written Submission (Summarised)

> Your honour the issue raised before the authority is related to DFIA license whether its a "Duty credit Scrips" as defined under GST and accordingly the rate will prevail.

> During the previous discussion response submitted by the respondent was that DFIA is different from Duty free credit scrips on the following grounds viz.....

- Duty credit scrips are issued under MEIS and SEIS scheme
- It is issued to exporter under FTP (Foreign trade Policy) and is freely transferable.
- Duty credit scrip's can be used for payment of specified duties of the customs on the imported goods.
- DFIA is a duty exemption scheme and does not give any credit of duty.

- In response to above we hereby submit as under....
- Duty Free Import Authorization is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed / utilized in the process of production of export product, May also be allowed.
- Duty Free Import Authorization shall be exempted only from payment of Basic Customs Duty.
- Provisions of paragraphs 4.12, 4.18, 4.20, 4.21 and 4.24 of FTP 2015-2020 shall be applicable to DFIA also.
- With regard to duty credit and duty exemption, these both terms are synonymous as duty credit available can only be utilized to pay custom duty liabilities where as duty exemption allows the importer to import goods duty free against the custom duty. With this nomenclature it's clear that end uses of both are same.
- DFIA license are also freely transferable as duty credit scrip's are.
- Clarification from member of GST Council that DFIA is duty credit scrips is also enclosed for further clearance.

**BEFORE THE Advance Ruling Authority (GST), Mumbai**  
**DETAILED DISCUSSION OF SUMMARISED SUBMISSION**

1. Basically, duty free scrips are paper authorizations that allow the holder to import inputs that go into manufacture of products that are exported or machinery used for producing such goods without paying duties equivalent to the printed value. The scrips are given to exporters for meeting certain goods and exporting it to specific markets. Main objective of the scrip is to incentivize the exporters to make more exports of specific commodities/services and those to specific markets. The FTPs (Foreign Trade Policies) usually mention the schemes eligible for scrips.
2. A Duty Credit Scrip/DFIA are issued by the Director General of Foreign Trade (DGFT) and can be used to pay various duties/taxes to the Central Govt. These are issued to both Exporters of Goods as well as Exporters of Service.
3. Department while disagreeing with the exemption to DIFA Licenses, opined that Duty Credit Scrips falls under different chapters. It is respectfully submitted that substance of both the schemes is relevant. It is respectfully submitted that Chapter 3 and Chapter 4 needs to be read together as both the chapters explains rewards to exporters. It may be noted that in both chapters common thread is benefits under MIES/SIES/EIS. Nomenclature used under HSN.4907 is 'Duty Credit Scrips. It is submitted as under:
  - a. Under both schemes credit, relief or advantage given is of payment of basic customs duty.
  - b. Both are scrips i.e. are paper authorizations.
  - c. Both are entitled only on fulfilling Export obligations and submission of BRC.
 It is observed by Department that DFIA is duty exemption scheme and does not give any duty credit. The meaning of word credit as defined in legal dictionary is as under:
 

'credit' (Delayed payment), noun advance, chance to borrow money on time, confidence, future payment, installment buying, loan, opportunity to obtain goods on time, permission to defer payment, purchase on time, purchase on trust, reliance

 Associated concepts: confirmed credit, consumer credit, contingent creditors, credit agreement, credit association, credit bureau, credit rating, credit union, creditor and debtor, creditor of bankrupt, creditor of estate, creditor's bill, creditor's committee, creditor's reference, creditor's suits, establishment of credit, extension of credit, general creditors, judgment creditors, junior creditors, letter of credit, line of credit, paper credit, personal credit, preferred creditors, renewal of credit, secured creditors, unconditional credit
 It is therefore submitted that use of word credit in chapter 3 and authorization/remission in chapter 4 has same meaning i.e. reward/advantage given to give boost to export.
5. Further Department view that difference between the 'Duty Credit Scrips' and DFIA is that, under 'Duty Credit Scrips', any OGL item can be imported, under DFIA only the items specified in a particular Authorization can be imported.
- It is submitted that Duty Credit scrips are value based whereas DFIA is quantity plus value based. It is respectfully submitted that this distinction has no relevance as the purpose of the schemes offered is to give boost to export and also to give competitive edge to Indian exporters by offerings these advantages.
6. Both the Duty Credit scrips' and DIFA Licences are freely transferable and can be used for payment of specified 'duties of the customs on the imported goods.
7. The Department opines that Duty Credit scrips' can be used for payment of specified 'duties of the customs on the imported goods and other fees as stipulated in the para 3.18 of the FTP. Whereas Duty free import Authorisation (DFIA) are issued in terms of Chapter 4 of FTP 2015-2020. The details are as under. Schemes under this Chapter enables duty free import of inputs for export production, including replenishment of inputs or duty remission. Duty Free Import Authorisation, is issued to allow duty free import of inputs.



This is amazing distinction wherein in one case term used "can be used for payment of specified 'duties of the customs on the imported goods" AND IN OTHER CASE duty free import of inputs for export production, including replenishment of inputs or duty remission.

#### B.OPINION OF DEPARTMENT ON THE ISSUE

a. Duty credit scrip's are issued to exporters as per chapter 3 of FTP 2015-20. As per para 3.02 of FTP, 'Duty credit scrip's are granted as reward for exports under MEIS and SEIS. The duty credit scraps shall be freely transferable and can be used for payment of specified duties of the custom on the imported goods and other fees as stipulated in para 3.18 of FTP.

b. Where as DFIA are issued in terms of chapter 4 of FTP 2015-20. The details are as under. Scheme under this chapter enable duty free imports of inputs for export production, including replenishment of inputs or duty remission. DFIA is issued to allow duty free import of inputs.

C. Another difference between 'Duty credit scrip's and 'DFIA' that, whereas under duty credit scraps, any OGL items can be imported, under DFIA only the items specified in a particular authorization can be imported.

#### C.MEANINGS OF RELEVANT WORDS.

a. Word Credit means - an amount of money that is given to someone. Publicly acknowledge a contributor's role in the production of.

b. Remit means To transmit (money) in payment /To refrain from exacting (a tax or penalty), The act of reducing or canceling the amount of money that you owe.

A remission is conventional when it comes about through an express grant to the debtor by a creditor. It is tacit when the creditor makes a voluntary surrender of the original title to the debtor under private signature constituting the obligation.

c. scrip means a certificate entitling the holder /authorisation/license.

#### D.FEATURES OF DUTY CREDIT SCRIPS DERIVED FROM FTP

No where Duty credit scrip is specifically defined. However reading from FTP following clear inferences can be drawn.

1. They are issued to exporters only.
2. The scrip allows duty deduction (non-payment of taxes) of a specified amount in the scrip.
3. The scrip value or tax reduction is expressed as a percentage of export turnover of the exporter.
4. The scrip value usually varies between 3 per cent to 5 per cent under Foreign Trade Policy 2015-20.

Basically, duty free scraps are paper authorizations that allow the holder to import inputs that go into manufacture of products that are exported without paying duties equivalent to the printed value. Main objective of the scrip is to incentivize the exporters to make more exports.

#### E.COMPARISSON BETWEEN MEIS AND DFIA LICENCES

##### 1. MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS)

(a) Earlier there were 5 different schemes (Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip, and VKGUY) for rewarding merchandise exports with different kinds of duty scraps with varying conditions (sector specific or actual user only) attached to their use. Now all these schemes have been merged into a single scheme, namely Merchandise Export from India Scheme (MEIS).

(b) Rewards for export of notified goods to notified markets under 'Merchandise Exports from India Scheme (MEIS) shall be payable as percentage of realized FOB value (in free foreign exchange).

(C) Scrip's issued under Exports from India Schemes can be used for the following:

(i) Payment of Basic customs duty for import of inputs / goods including capital goods, except items listed in Appendix 3 A.

(d) Minimum value addition shall be required to be achieved.

(e) These duty credit Scrip's are to be freely transferable and usable for payment of Custom duty.

(f) Entitled only after export is completed and Bank realization certificate is obtained.

(g) Validity of scrip is 24 months.

(h) Issued only after export obligation is completed and endorsed by word TRANSFERABLE on scrip.

##### 2.DFIA SCHEME

(a) Duty Free Import Authorization is issued to allow duty free import of inputs.

(b) Duty Free Import Authorization shall be exempted only from payment of Basic Customs Duty.

(c) Duty Free Import Authorization shall be issued on post export basis for products for which Standard Input Output Norms have been notified.

(d) Minimum value addition shall be required to be achieved.

(e) Rewards for export of goods under 'Duty Free Import Authorization (DFIA) shall be payable on the basis of on realization in free foreign exchange).

(f) These duty credit Scrip's are to be freely transferable and usable for payment of Custom duty.

(g) Validity of scrip is 12 months.



(h) Issued only after export obligation is completed and endorsed by word TRANSFERABLE on scrip.

Note: Sample of MEIS and DFIA licenses enclosed for your reference.

#### F.SUBMISSIONS

1. At the outset it is submitted that there is no dispute that the scrip DFIA is covered under HSN code: 4907 which read as "Duty Credit Scrip".

2 Question ultimately boils down to the issue whether DFIA license is Duty Credit Scrip.

3 It is submitted that we disagree with department view for the reasons as under:

A. MEIS and DFIA are under different chapter. It is submitted that this makes no difference as rational behind the issue of both scrips need to be taken into considerations.

B. Under Duty Credit Scrip any OGL can be imported. In our opinion DIFA license also allows to import only OGL items. Hence this view expressed by the department is incorrect.

C. Department view is that the Duty Credit Scrip can be used for payment of specified duties and under DFIA they say it is duty remission. We do not understand how these two benefits are different. Essence of the benefits is reward in duty payment.

4. It is submitted that rationale behind issuing such scrip's need to be taken into consideration. Press release issued by the GST council explains the rationale behind this. Also FTP policy enumerates both the schemes MEIS and DFIA as export incentive. Copy of Press release enclosed.

5. The object in exempting Duty credit scrip's from GST is as under:

"Mindful of the difficulties faced by exporter's post-GST leading to a decline in export performance and export competitiveness, the Council had last month set up a high power Committee on Exports under Revenue Secretary Shri Hasmukh Adhia to recommend suitable strategies for helping this sector. This Committee had five senior Government functionaries from the Centre and an equal number from the States as members."

The Council identified the major difficulties constraining the export sector are on account of delays in refunds of IGST and input taxes on exports and working capital blockage as exporters have to upfront pay GST on inputs and capital goods for export production or for procuring goods for export. Another difficulty was that the duty credit scrips such as MEIS was losing value due to its reduced usability as it could no longer be used to pay IGST / GST.

The Council was unanimous that it is in the national interest to take all possible measures to support the exporting community, which earns valuable foreign exchange and provides significant employment especially in the small and medium sector.

6. It is submitted that how exporter having DFIA license discriminated from exporter having MEIS license. This is against natural justice.

7. Your attention is drawn to notification issued by GST council while determining the taxability of RECs and PSLCs licenses. It is observed that these licenses are not in the nature of duty remission or nonpayment of duties. Copy of Notification enclosed.

8. It is submitted that in the letter issued by GST council, clarification says that DFIA license is like MEIS/SEIS and exempt from GST. It is submitted that if your honour disagree with the view of GST council reference may be made to technical officer for the clarification on their opinion.

#### **EXPORT PACKAGE GST**

##### **PRESS BRIEF**

The GST Council under Chairmanship of Union Finance Minister Shri Arun Jaitley has in its 22nd Meeting held at Delhi today approved a major relief package for exporters.

2. Mindful of the difficulties faced by exporters post-GST leading to a decline in export performance and export competitiveness, the Council had last month set up a high power Committee on Exports under Revenue Secretary Shri Hasmukh Adhia to recommend suitable strategies for helping this sector. This Committee had five senior Government functionaries from the Centre and an equal number from the States as members.

3. After wide ranging discussions with major Export Promotion Councils including FIEO, AEPC, GJEPCC, EEPCC, CLE, CHEMEXIL, PARMAEXCIL and Handicrafts EPC etc. and interacting with all stakeholders the Committee presented its recommendations to the Council today.

4. The Council identified the major difficulties constraining the export sector are on account of delays in refunds of IGST and input taxes on exports and working capital blockage as exporters have to upfront pay GST on inputs and capital goods for export production or for procuring goods for export. Another difficulty was that the duty credit scrips such as MEIS was losing value due to its reduced usability as it could no longer be used to pay IGST / GST.

5. The Council was unanimous that it is in the national interest to take all possible measures to support the exporting community, which earns valuable foreign provides significant employment especially in the small and medium sector. Accordingly, the Council approved the following package of relief and incentives for exporters with immediate affect:

a. Within the next 4 days i.e. by 10.10.2017 the held-up refund of IGST paid on goods exported outside India in July would begin to be paid. The August backlog would get cleared from 18.10.2017 and refunds for subsequent



months would be handled expeditiously. Other refunds of IGST paid on supplies to SEZs and of inputs taxes on exports under Bond/LUT, shall be processed from 18.10.2017 onwards. For this, the Council agreed to suitably empower Central and State GST officers so that exporters get refunds from one authority only. Related matters of settlement of funds are being resolved.

b. To prevent cash blockage of exporters due to upfront payment of GST on inputs etc. the Council approved two proposals, one for immediate relief and the other for providing long term support to exporters. Immediate relief is being given by extending the Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) / 100% EOU schemes to sourcing inputs etc. from abroad as well as domestic suppliers. Holders of AA / EPCG and EOUS would not have to pay IGST, Cess etc. on imports. Also, domestic supplies to holders of AA / EPCG and EOUS would be treated as deemed exports under Section 147 of CGSTISGST Act and refund of tax paid on such supplies given to the supplier.

c. Merchant exporters will now have to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export. The details would be released soon.

d. The permanent solution to cash blockage is that of "e-Wallet" which would be credited with a notional amount as if it is an advance refund. This credit would be used to pay IGST, GST etc. The details of this facility would be worked out soon. The Council desired that the "e-Wallet" solution should be made operational w.e.f. 1st April 2018.

e. Exporters have been exempted from furnishing Bond and Bank Guarantee when they clear goods for export.

f. Specified banks and Public Sector Units (PSUs) are being allowed to import Gold without payment of IGST. This can then be supplied to exporters as per a scheme similar to Advance Authorization.

g. To restore the lost incentive on sale of duty credit scrips, the GST on sale/purchase of these scrips is being reduced from 5% to 0%.

h. GST on bunker fuel is being reduced to 5% for both coastal vessels and foreign going vessels. This will boost coastal shipping. It will also improve India's competitiveness.

6. The Council is confident that these measures would provide immediate relief to the export sector and enhance export competitiveness of India. The Council also decided to continue to monitor the situation closely so that going forward all required support continues to be extended to this important sector.

Additional Submissions on 06.08.2018

In the case of Spaceage Syntex Pvt. Ltd.

In the course of hearing before your honour on 1st August, 2018 following points were discussed:

A. ENTRY NO. 4907

1. Entry No. 4907 read as "Duty Credit Scrips".

2. We were in agreement that DFIA license falls under this entry, but differed on the point whether DFIA license is "Duty Credit Scrips"?

3. Entry No. 4907 "Duty Credit Scrips" is without any prefix or suffix. No were reference to Chap.3 and/or Chap.4 of FTP is indicated. Hence it is too understood in broader perspective.

4. It was explained that nowhere duty credit scrips are defined. Your honour is of the opinion that MEIS & SEIS are only Duty Credit Scrips, as these words appears in Para 3.02 of FTP 1915-20.

5. It is submitted that MEIS / SEIS / DFIA are the schemes under FTP and authorisations for the duty credit / duty saved are issued under these schemes.

6. We had produced the MEIS and DFIA authorisations to further highlight duty credit/saved aspect. MEIS authorisation specifies the duty credit in authorisation. The DFIA licence also gives the duty saved / credit amount, by giving the permitted CIF value of imports. It was explained that under both schemes only basic duty exemption is allowed. Both authorisations states Duty credited and duty saved/credit amount (Copies of Both Attached)

7. The first and most elementary rule of constructions is to assume that the words and phrases of legislation are used in their technical meaning if they have acquired one or otherwise in the ordinary meaning. If the language of the statute is clear and unambiguous, words must be understood in their plain meaning. It is submitted that the Duty Credit Scrips means authorisations where duty is saved/not payable.

8. It was submitted that both the schemes are rewards under foreign trade policy and are export promotion schemes.

9. We therefore submit that "Duty Credit Scrips" referred in Entry No.4907 is inclusive concept which includes all Duty Credit Scrips where duty saving / nonpayment is involved.

10. We are enclosing herewith circular no. 46/20/2018 issued by Technical Officer, Tax research unit GST. This letter is addressed to the Principal Commissioner / Director General / Chief Commissioners etc. The circular clarifies following aspects:

1. Various certificates like REC's, PSLC's etc are classified under heading 4907 and will accordingly attract GST @ 12%.

2. Duty paying scrips classifiable under the same heading will attract NIL GST.

3. Copy of the same is enclosed herewith.

11. In the course of discussion we have submitted before your honour, letter received from GST council clarifying applicability of GST. This letter clarifies that advance authorisation are included in Duty Credit Scrips and exempted from GST. Copy of the letter is enclosed. Advance authorisation is under chapter 4 of FTP. Hence it is incorrect to say that credit scrips falls under chapter 3 only.

This clarification is given on the basis of minutes of 22nd GST council dated 6th October 2017 meeting and it is not superintendent's view.

12. The exemption of MEIS is based on the clarification in GST council press release and clarification says "Duty Credit Scrips such as MEIS". Thus the intention of the legislature is to include similar scrips for exemption. (Copy enclosed.) A long title of a Legislation may not control, circumscribe or widen the scope of the legislation, if the provisions thereof are otherwise clear and unambiguous, but if the terms of the legislation are capable of both a wider and a narrower construction, that construction which would be in tune with the avowed object manifested in the preamble or declared in the long title, ought to be accepted.

13. Circulars / notifications have statutory legal backing and emanate through delegated legislation or subordinate legislation. Compliance in accordance with them is mandatory. Judicial authorities are duty bound to act upon the true intention of legislature.

14. In the background of above discussion we submit that it is incorrect to ignore notifications /circulars and simply rely on exact words without considering the context.

15. Schemes under chapter 3 and chapter 4 grant the benefit of Duty exemption, and hence need to be considered as duty credit scrips.

16. Letter received by Surshti Trading from superintendent clarifies that advance authorisation are also included in duty credit scrips.

17. Tweet from honourable commerce minister clarifying that rate should be zero following the same analogy:

**B. MEIS VS DFIA:**

1. In the course of discussion similarities between MEIS and DFIA were explained. Same are in detailed listed in our submission dated 01/08/2018. In the course of discussion no difference was observed by your honour except that the words Duty Credit Scrips are not tagged to DFIA.

2. Also rationale followed by GST council while granting exemption on Duty Credit Scrips was explained. It was stated that taxing the sale/purchase of the scrips amounts to double taxation under GST. Bill of entries in support were produced. Following example can explain it further:

i. CIF value say	100
ii. Duty thereon say (Paid through MEIS or DFIA)	100
iii IGST @18%	36
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Hence amount payable	136

Thus IGST is already charged once and hence taxing the scrip sale/ purchase amounts to double taxation.

Both IGST payable using MEIS or DFIA is on the above basis. With this rationale the Duty Credit Scrips are exempted from levy of GST. Hence the same logic needs to be followed in both the cases. Enclosing herewith copies of BOE for your reference.

3. Caused explained while exempting Duty credit scrip's from GST is as under:

"Mindful of the difficulties faced by exporters post-GST leading to a decline in export performance and export competitiveness, the Council had last month set up a high power Committee on Exports under Revenue Secretary Shri Hasmukh Adhia to recommend suitable strategies for helping this sector. This Committee had five senior Government functionaries from the Centre and an equal number from the States as members.

The Council identified the major difficulties constraining the export sector are on account of delays in refunds of IGST and input taxes on exports and working capital blockage as exporters have to upfront pay GST on inputs and capital goods for export production or for procuring goods for export. Another difficulty was that the duty credit scrips such as MEIS was losing value due to its reduced usability as it could no longer be used to pay IGST / GST.

The Council was unanimous that it is in the national interest to take all possible measures to support the exporting community, which earns valuable foreign exchange and provides significant employment especially in the small and medium sector.

It is incorrect to ignore the intention of the legislature.

4. The rule of interpretation for exemption is: an exemption clause in taxing statute must be, as far as possible, construed liberally and in favour of the assessee, provided no violence is done to the language used.

C. In the background of above submissions we pray as under:

- a. The authorities should not interpret the words Duty Credit Scrips in narrower sense. Interpretation should be broad based and convincing taking into consideration circumstantial clarifications / notifications issued.

It is submitted that the directory publications are issued in support of the main provision and cannot be ignored all together

b. It is submitted that in case your honour has different opinion, 30 days time be given to seek further clarification from GST council. A letter is already forwarded to Joint Secretary ,GST and also to DGFT. Copies attached.

c. It is submitted that clarification be sought by the authority from GST council considering far reaching effects on industry as the issue relates to export promotion which is of national interest / importance.

d. Advance ruling being judicial authority ; we request your honour to explain the interpretation of Entry No. 4907 following rules of interpretation of taxing statute.

**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the questions(s) on which advance ruling is required**

In 22 meeting of GST council difficulties faced by Exporters were addressed. Press release by the council in sub clause (g) of the clause (V) states as under :

"to restore the lost incentive on sale of duty credit scrips, the GST on Sale-Purchase of the scrips has been reduced from 5% to 0%.

A ruling is required whether DFIA (Duty Free Import Authorization) covered under HSN - 4907.0090 has nil GST applicable

**03. CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

Written submissions

M/s Spaceage Syntex Pvt. Ltd. 47, Navketan Industrial Estate, Mahakali Caves Road, Andheri(East) Mumbai 400033 (here in after referred to as 'the applicant') has filed above detailed application under Section 98 of the Central Goods and Service Tax Act, 2017 read with Rule 104 (1) Of the CGST Rules, 2017 seeking advance ruling on:

- (i) Whether GST is applicable on Sale and/or Purchase of DFIA Licenses.
- (ii) A ruling is required whether DFIA(Duty Free Import Authorisation) covered under HSN 4907 00 90 has nil GST applicable.

2. M/s Spaceage Syntex Pvt. Ltd. was registered under Service Tax having Service Tax Registration No. AAACS0730MST001 for providing 'Business Auxiliary Services' covered under Section 65(105)(zzb) of Finance Act, 1994. Now in GSTIN No.27AAACSO730L1ZG is engaged in trading of Export Entitlement Licenses such as DFIA/DFRC etc. The applicants have stated that they have purchased the said licenses from the exporters and sold to manufacturers to avail the benefit of entitlement of duty free imported goods.

3. The applicant is engaged in trading of Export Entitlement Licenses such as DFIA/DFRC etc. which are to be covered under HSN 4907 as 'DUTY FREE CREDIT SCRIPTS'. A duty Credit Scrip is issued by the DGFT and can be used to pay various duties/taxes to the Central Government. These are issued to both exporters of goods as well as exporters of services i.e. Service Exporters, Merchandise Exporters, EPCG Scheme. The value of scrip varies from scheme to scheme, product to product and country to country. However, the scrip value in most of the cases is in the range of 2% to 5% of the realised (FOB value) ( in free foreign exchange). These scrips are issued to exporters as an incentive for them as the export industry has huge potential for employment creation in India.

4. The exporter to whom the Duty Credit Scrip has been issued can use the Duty Credit Scrip for the payment of

1. Basic Custom Duty.
2. Safeguard Duty.
3. Transitional Product Specific Safeguard Duty.
4. Anti-Dumping Duty.

5. With effect from 13.10.2017, GST on "Duty Credit Scrips" classified under CSH No.4907 is NIL as per Serial No.122A inserted vide Notification No.35/2017-Central Tax(Rate) dated 13.10.2017. Currently there is zero GST on Supply of these Scrips and can be used to pay Customs Duties, Composition fee, Application fee under Foreign Trade Policy(FTP).

6. The basic issue to be decided in the application is whether the DFIA ( Duty Free Import Authorisation) will be covered under 'Duty Credit Scrips' as envisaged in the Serial No. 122A of Notification 1/2017 Central Tax (Rate) inserted vide Notification No.35/2017-Central Tax(Rate) dated 13.10.2017 ? The answer to this question is negative due to following reasons

6.1.1. 'Duty credit scrips' are issued to exporters as per Chapter 3 of Foreign Trade Policy (FTP), 2015-2020. As per para 3.02 of FTP, 'Duty credit scrips' are granted as rewards for exports under Merchandise Exports from India Scheme(MEIS) and Service Exports from India Scheme(SEIS). 'The Duty Credit scrips' shall be freely transferable and can be used for payment of specified duties of the customs on the imported goods and other fees as stipulated in the para 3.18 of the FTP.



6.1.2. Whereas Duty Free Import Authorisation (DFIA) are issued in terms of Chapter 4 of FTP 2015-2020. The details are as under. Schemes under this Chapter enables duty free import of inputs for export production, including replenishment of inputs or duty remission. Duty Free Import Authorisation is issued to allow duty free import of inputs.

6.1.3. Another difference between the Duty Credit Scrips' and DFIA is that, whereas under 'Duty Credit Scrips', any OGL item can be imported, under DFIA only the items specified in a particular Authorization can be imported.

6.1.4. In the view of the discussions above, it is evident that DFIA is not 'Duty Credit Scrip'. The 'Duty Credit Scrips' are issued under MEIS and SEIS schemes as per Chapter 3 of the Foreign Trade Policy as 'Reward against export of Specified goods. They can be utilised to make payment of Customs duties on the imported goods. On the contrary, DFIA is separate scheme under chapter 4 of the FTP. DFIA is not included in the MEIS and SEIS prescribed under Chapter 3 of FTP. DEIA is duty exemption scheme and does not give any duty credit. DFIA cannot use for payment of Customs Duty. Thus 'DFIA' is distinguished from 'duty credit scrips' and hence it is not Duty Credit Scrip as envisaged under the Serial No. 122A of Notification 1/2017 Central Tax (Rate) inserted vide Notification No.35/2017-Central Tax(Rate) dated 13.10.2017 even if it falls under CTH 4907. Therefore, in the view of the above discussion, DFIA will fall under Chapter 4907 and attract applicable GST.

6.1.5. Notwithstanding anything contrary to whatever stated herein above it is also to bring your kind notice that this issue falls under purview of the Foreign Trade policy and hence it is suggested that authority may seek opinion from DGFT also.

#### **PRAYER**

(i) Considering the facts discussed in foregoing paragraphs, the questions (i) framed by the applicant in Point No.14, whether GST is applicable on Sale and/or Purchase of DFIA licences, the answer is "Yes".

(ii) Answer to question number 2 framed by the applicant in Point no.16, is Duty Free Import Authorisation (DFIA) is not "Duty Credit Scrip" and hence buying and selling of DFIA is taxable under GST and will fall under HSN 4907. The NIL GST Rate is not applicable simply because exemption under Notification No.35/2017-Central Tax(Rate) dated 13.10.2017 is limited only to 'Duty Credit Scrips' which are different than DFIA.

#### **04. HEARING**

The case was taken up for preliminary hearing on dt. 13.06.2018, with respect to admission or rejection of the application when Sh. Anil Vishwakarma, C.A. appeared and requested for admission of application as per their contentions in ARA application. The jurisdictional officer Ms. Hema Venkatesh, Supt. appeared and made written submissions.

The application was admitted and final hearing was held on 17.07.2018, Sh. Anil Vishwakarma, C.A. appeared and made oral and written submissions. As requested another opportunity was given wherein Sh. V. D. Lagu, C.A. alongwith Sh. Pravin Mehta, Director and Sh. Mozar Dhalu appeared and made oral and written submissions and requested that they would be making further submission latest by 06.08.2018. The jurisdictional officer, Sh. Yashwant Mulye, Supt., Mumbai East Commissionerate appeared and made written submissions.

#### **05. OBSERVATIONS**

We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department.

In view of the submissions made by the applicant we find that the basic issue before us is whether the 'Duty Free Import Authorization (DFIA) license' is a 'Duty Credit Scrip' as defined under GST laws and therefore we discuss below both the concepts.

#### **DFIA LICENSE :**

Under Chapter 4 of the FTP, 2015-2020, there are two Schemes for exporters, namely, "Duty Exemption Schemes" (DES) and "Duty Remission Schemes" (DRS). The DES consist of, (a) Advance Authorisation



(AA) (which will include Advance Authorisation for Annual Requirement) and (b) DFIA. We shall limit this discussion only to DFIA scheme which is as follows:

1. As per para 4.25 of the FTP, DFIA is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilised in the process of production of export product, may also be allowed.
2. The holder of DFIA has to properly do accounting of inputs as mentioned in para 4.12 of the FTP.
3. Para 4.18 of the FTP which deals with the exportability/importability of items that are prohibited/restricted, etc. must be followed by the holder of DFIA license. Such holder of DFIA license shall also source inputs from the domestic market and the Export proceeds shall be realized in freely convertible currency except otherwise specified. Goods exported under DFIA may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue.
4. DFIA shall be exempted only from payment of Basic Customs Duty (BCD).
5. DFIA shall be issued on post export basis for products for which Standard Input Output Norms (SION) have been notified.
6. Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document for export prescribed under the GST rules.
7. Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

No DFIA shall be issued for an input which is subjected to pre-import condition or where SION prescribes 'Actual User' condition or pre import condition for such an input.

9. Applicant shall file online application to Regional Authority concerned before starting export under DFIA and Export shall be completed within 12 months from the date of online filing of application and generation of file number. While doing export/supply, applicant shall indicate file number on the export /supply documents viz. Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules.
10. Wherever SION permits use of either (a) a generic input or (b) alternative input, the specific input together with quantity [which has been used in manufacturing the export product] should be indicated / endorsed in the relevant Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules . Only such inputs may be permitted for import in the authorisation in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such generic input/alternative input. In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production and declared in Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules.



11. Separate DFIA shall be issued for each SION which has a validity of 12 months from the date of issue. No further revalidation shall be granted.
12. In respect of certain Sensitive Items under DFIA, the exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill and while issuing DFIA. The concerned Authority shall mention technical characteristics, quality and specification in respect of those inputs in the Authorisation.
13. DFIA scheme shall not be available for Gems and Jewellery sector and are issued only in respect of goods.

Thus it can be said that DFIA's are paper authorizations that allow the holder to import inputs that go into manufacture of products that are exported. Under DFIA, which is mostly quantity based, only items specified in a particular Authorization can be imported. DFIA is issued on post export basis for products for which Standard Input Output Norms have been notified. The benefits for export of goods under DFIA is payable on the basis of realization of receipts in foreign exchange. Thus it is important to state that DFIA is issued only after the goods are exported and export obligation is completed. DFIA, under the GST laws is covered under HSN code 4907.

#### **DUTY CREDIT SCRIPS :**

Under Chapter 3 of the FTP, there are two schemes for exports of Merchandise and Services respectively, namely (i) Merchandise Exports from India Scheme (MEIS) and (ii) Service Exports from India Scheme (SEIS).

As per the para 3.02 of the FTP, Duty Credit Scrips are granted as rewards under MEIS and SEIS.

The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for import of certain inputs or goods, including capital goods and also payment of Central excise duties on domestic procurement of inputs or goods.

- B. Objective of the MEIS is to promote the manufacture and export of notified goods/ products to certain notified markets and such export shall be rewarded under MEIS. Such reward would be calculated on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified (Hence it can be said that the duty credits scrips issued are on value basis and not quantity based).
- C. As per para 3.06 of the FTP certain exports categories /sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS.
- D. Under SEIS Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as given in Appendix 3D) on net foreign exchange earned.
- E. For duty credit scrips there are Status Categories like One Star Export House, Two Star Export House, etc. which are differentiated in the basis of turnover value of exports.

To sum up, Duty credit scrips are issued under MEIS and SEIS scheme and can be used to pay various duties/taxes to the Central Govt. It is issued to exporters of goods/services under FTP



(Foreign trade Policy) and is freely transferable. Duty credit scrip's can be used for payment of specified duties of the customs on the imported goods. Duty credit available can only be utilized to pay custom duty liabilities. DFIA license are also freely transferable as duty credit scrips are. Duty Credit scrips are value based whereas DFIA is predominantly quantity based. Both the Duty Credit scrips and DIFA Licences are freely transferable and can be used for payment of specified 'duties of the customs on the imported goods.

In view of the above discussions we find that there is a lot of difference between Duty Credit Scrips and DFIA which includes the following :

- a. Duty Credit Scrips are covered under Chapter 3 of the FTP and can be used for payment of specified duties of the customs on the imported goods whereas DFIA is a duty exemption scheme and does not give any credit of duty.
- b. Duty credit scrips are issued under MEIS and SEIS whereas DFIA is not covered under MEIS and SEIS.
- c. DFIA falling under Chapter 4 of the FTP enable duty free import of inputs for export production, including replenishment of inputs or duty remission whereas Duty Credits Scrips are issued under Chapter 3 of the FTP whose objectives are to provide rewards to exporters to offset infrastructural inefficiencies and associated costs.
- d. Duty Credit Scrips can be used for payment of specified duties of the customs on the imported goods and in DFIA, duty free import of inputs for export production, including replenishment of inputs or duty remission.
- e. Duty Credit Scrips are used for making payment of Basic customs duty for import of inputs / goods including capital goods, except certain listed items whereas Duty Free Import Authorization shall be exempted only from payment of Basic Customs Duty.
- f. DFIA is issued for products for which Standard Input Output Norms have been notified whereas no such norms are required for issue of Duty Credit Scrips.
- g. The validity of a Duty Credit Scrip is of 24 months whereas the validity of DFIA is 12 months.

The applicant has submitted that both Duty Credit Scrips and DFIA's are issued as export incentive and therefore it does not matter that the Duty Credit Scrip can be used for payment specified duties and under DFIA it is duty remission. The applicant has also submitted that the GST Council had observed that the duty credit scrips such as MEIS was losing value due to its reduced usability as it could no longer be used to pay IGST / GST. Hence it clearly appears that it was only the duty credit scrips which were losing their value and not DFIA because DFIA does not envisage payment of duty at all. DFIA is connected with duty free imports. This is definitely a major difference between the two. The applicant has also submitted that to restore the lost incentive on sale of duty credit scrips, it was proposed by the Council that the GST on sale purchase of these duty credit scrips was being reduced from 5% to 0%.

To sum up, we find, in view of the discussions made above that, Duty Credit Scrips and DFIA's are not one and the same or similar at all. They are different incentives given to exporters with different conditions and have been separately defined and explained in different Chapters of the FTP. Even though both are an incentive to exporters to promote and increase exports from the country, both the schemes are



used in different circumstances and in different manner. When the FTP itself has segregated the two in different Chapters with different procedures, it would not be proper to consider the two schemes as one and the same and therefore we differ with the views of the applicant on this issue. Hence we find that DFIA is distinguishable from 'Duty Credit Scrips' and cannot be considered as a Duty Credit Scrip as envisaged under the Serial No. 122A of Notification 1/2017 Central Tax (Rate) inserted vide Notification No.35/2017-Central Tax(Rate) dated 13.10.2017 even though it falls under CTH 4907. Hence we find that DFIA though will fall under Chapter 4907 and attract applicable GST as exemption is in respect of only Duty Credit Scrips.

Finally the applicant has submitted that letter received from GST council clarifies that advance authorisation are included in Duty Credit Scrips and exempted from GST. They have also submitted that this clarification is given on the basis of minutes of 22nd GST council dated 6th October 2017 meeting. In this connection we find that the mail sent to Mr Manish Modi states that "I am directed to inform you that as per the minutes of discussions in the 22nd GST Council Meeting held on 6th October, 2017 the Advance Authorizations are included in the Duty Credit Scrips..." However it appears that no circular, notification, etc appear to have been issued by the Government in this regard and therefore the contention of the applicant on the said issue is not acceptable.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

**ORDER**

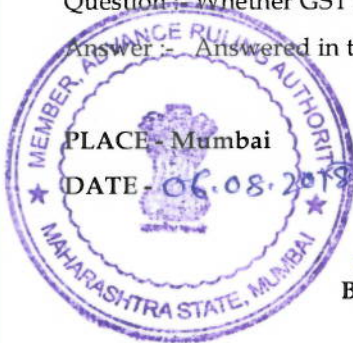
(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 13/2018-19/B- 86 Mumbai, dt. 06.08.2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- Whether GST is applicable on Sale and / or Purchase of DFIA licenses?

Answer :- Answered in the affirmative.



—sd—  
B. V. BORHADE  
(MEMBER)

—sd—  
PANKAJ KUMAR  
(MEMBER)

**CERTIFIED TRUE COPY**

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Jt. Commissioner of S.T., Mahavikas, Mumbai for website.

  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021