

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	27AAACB4599E1ZL	
Legal Name of Applicant	BASF India Limited	
Registered Address/ Address provided while obtaining user id	Mr. Satish Dhawan Finance and Accounts BASF India Limited, 3rd Floor, Shree Sawan Knowledge Park, Plot No D 507, MIDC, Turbhe, 400 705 Navi Mumbai, India.	
Details of application	GST-ARA, Application No. 27 Dated 21.02.2018	
Concerned officer	Dy. Commissioner of Sales Tax(E-619) Large Tax Unit-II, Mumbai.	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	High Sea Sales
B	Description (in brief)	The applicant is engaged, inter alia, in the manufacture & trading of chemicals and allied products. The applicant will be selling its products purchased from its overseas related party to its customers in India before the goods are entered for customs clearance (commonly referred to as a High sea sale transaction). The customer to whom the goods are being sold is known to the Applicant at the time of placing order on their overseas supplier.
Issue/s on which advance ruling required	(iv) admissibility of input tax credit of tax paid or deemed to have been paid (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 clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with 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 clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 [hereinafter referred to as "the IGST Act"] read with 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 BASF India Limited, the applicant, seeking an advance ruling in respect of the following questions :

1. The Applicant will be purchasing the goods from its overseas related party situated abroad based on purchase order received from its customers. While the goods are in transit, the goods will be sold by the Applicant to its customers before the goods are entered for customs clearance in India. Whether IGST will be leviable on such sale effected by the Applicant to customers who are known to them at the time of placing order on the overseas party?
2. Whether input tax credit will have to be reversed, to the extent of inputs, input services and common input services used by the Applicant, in case the above transaction is not subjected to the levy of IGST by treating the same as an exempt supply for the purpose of Section 17 of the CGST Act?



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

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

"STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

1. BASF India Limited (hereinafter referred to as 'Applicant') having its corporate head office at, 3rd Floor, Shree Sawan Knowledge Park, Plot No D 507, MIDC, Turbhe, Navi Mumbai, India-400 705, is a subsidiary of BASF Germany and is engaged in the business of manufacturing and trading of, inter alia, chemicals and allied products.
2. The Applicant was registered under the *erstwhile* tax regime, and was discharging excise duty, service tax and value added tax (VAT) on the manufacture, on commission and sale of the products, as applicable.
3. Under the current regime, the Applicant is registered as per the provisions of the GST Laws.
4. The Applicant seeks the Ruling of the Advance Ruling Authority on the following transaction –
 - a) The Applicant is engaged in the trading of chemicals and allied products ('Products');
 - b) In connection with the said activity, the Applicant will be buying the Products from an overseas supplier who will be the Applicant's related party. The said transactions will be at arm's length pricing.
 - c) The Applicant will be buying the Products from such overseas party against purchase orders received from the Applicant's customers in India. In other words, it will be a back to back purchase order.
 - d) As against the purchase order, the overseas party will export the products. The export documents such as the Bill of Lading will show the Applicant as the buyer of the goods.
 - e) Before the goods cross the customs frontier of India and is entered for customs clearance, the goods in question will be sold by the Applicant to its customer who are known to them;
 - f) The sale will be effected by executing an agreement of sale (known as high sea sale agreement) and by endorsing the bill of lading in the name of the end customer. Sale invoice indicating the price at which goods are sold by the Applicant to the end customer will also be issued;
 - g) Therefore, the sale of goods will be by the Applicant to their customers who were identified at the time of placing order on the overseas related party.
 - h) The Import General Manifest ('IGM') will be filed in the name of the end customer (final buyer) by the shipping line.
 - i) Thereafter, the Bill of Entry will be filed by the end customer who will discharge the applicable duties of customs and IGST on the imported goods and will clear the goods for home consumption/warehousing, as the case maybe.

A complete set of the draft documents which will be involved in the transaction is being annexure herewith as Exhibit – A (Only for the purpose of illustration and better understanding).

5. In trade parlance, the transaction as proposed above, is commonly referred to as a 'High sea sale transaction'.
6. The proposed transaction consists of (a) sale of goods by the overseas related party to the Applicant (First sale); and (b) Sale of the same goods by the Applicant to its customers for whom the goods were bought by the Applicant its related party (Second sale). The customers of the Applicant will be known to them at the time of placing order on the foreign supplier itself.
7. In terms of the proviso to Section 5(1) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), on imported goods, IGST would be levied at the point when duty of customs becomes payable in terms of Section 12 of the Customs Act and the said IGST would be levied in terms of Section 3(7) of the Customs Tariff Act, 1975 ('Customs Tariff Act').
8. However, the sale transaction by the Applicant to the customer also qualifies as an inter-state supply of goods in terms of Section 7 of the IGST Act. Therefore, as far as this sale is concerned, a question is arising as to whether the said sale of goods will amount to a supply subject to levy of IGST under the IGST Act, when the same goods will once again be subject to a levy of IGST under Section 3(7) of the Customs Tariff Act at the time of importation into India.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

A. APPLICANT'S ELIGIBILITY TO FILE PRESENT ADVANCE RULING APPLICATION.

- A.1 Sub-section (c) of Section 95 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), defines the term 'applicant' as under:-

"applicant" means any person registered or desirous of obtaining registration under this Act"

... Emphasis Supplied

- A.2 In the present matter, the Applicant is registered under the GST regime and hence covered under the definition of the term "applicant" for the purpose to presenting an application before the Advance Ruling Authority under the GST regime. Copy of GST Registration certificate for the state of Maharashtra is enclosed as **Exhibit-B**.

- A.3 Further, Section 97(2) of the CGST Act specify the issues for which, an advance ruling can be sought. Section 97(2) of the CGST Act reads as under: -

"97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(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."

... **Emphasis Supplied**

Thus, as per the said section, advance ruling may be sought by the Applicant on the questions concerning determination of the liability to pay tax on goods or services or both and on the eligibility to avail input tax credit. The Applicant submits that the questions for determination in the instant advance ruling application concern (a) admissibility of input tax credit of tax paid; and (b) determination of the liability to pay tax on the goods.

- A.4 Therefore, the Applicant in the instant case is eligible to file the present advance ruling application before the Maharashtra Authority for Advance Ruling, Mumbai, appointed vide Notification No. MGST-1017/CR 193/Taxation, dated 24.10.2017 read with Section 99 of Maharashtra Goods and Service Tax Act, 2017.

C. **APPLICANT'S INTERPRETATION**

THE SALE OF GOODS MADE BY THE APPLICANT TO THE END CUSTOMER BEFORE THE GOODS CROSSING THE CUSTOMS FRONTIER OF INDIA ON THE BASIS OF A BACK TO BACK PURCHASE ORDER WILL NOT QUALIFY AS A SUPPLY SUBJECT TO LEVY OF IGST

- C.1 It is submitted that the sale of goods made prior to the customs clearance of the goods cannot qualify as a supply subject to a levy of IGST under the IGST Act.

- C.2 The relevant provisions under the IGST Act are being reproduced herein as under –

5. Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on 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 per cent., 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 (51 of 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 (52 of 1962).

7. Inter-State supply. — (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in -

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) *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.*

- C.3 As per Section 5 of the IGST Act read with Section 7, inter-state supply of goods will be subject to a levy of IGST. Supply of goods imported into India will also qualify as an inter-state supply of goods subject to a levy of IGST. However, in respect of the imported goods, the levy would be in accordance with proviso to Section 5(1) of the IGST Act.

- C.4 In other words, where goods are imported into India, IGST will be levied at the point of levy of duty of customs in accordance with the provisions of the Customs Act, 1962 and the IGST will be levied under Section 3(7) of the Customs Tariff Act.

- C.5 In the instant scenario, the imported goods will be sold by the Applicant to its end-customer before the goods are entered for customs clearance. This leg of the transaction will also qualify as an inter-state supply in terms of Section 7 of the IGST Act. Therefore, the essential question is whether this sale of goods happening before the goods are entered for customs clearance will be subject to a levy of IGST in terms of the provisions of the IGST Act.

- C.6 It is submitted by the Applicant that from a combined reading of Section 5(1) and the proviso to Section 5(1) of the IGST Act, it is evident that IGST on imported goods will be leviable only at the time of importation and at the point when duty of customs under Customs Act is leviable. Therefore, it is submitted that levying IGST once again on sale transactions which have happened prior to the importation of the same goods, does not arise.

- C.7 This view of the Applicant has also been fortified vide the *Circular No. 33/2017- Cus* dated 1.08.2017 issued by the Central Board of Excise & Customs, New Delhi. The said circular has also been reproduced under:

"1. 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 subsection (12) of section 3 of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, cesses 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.



6. Field formations are requested to decide the cases of high sea sales of imported goods accordingly. Difficulties, in the implementation of this circular may be brought to the knowledge of the Board.

... **Emphasis Supplied**

C.8 Thus, the above circular also affirms the view that high sea sale of goods in the course of import into India will not qualify as a supply subject to a levy of IGST. Only at the time of importation, at the point where the goods are entered for customs clearance will IGST be levied. Therefore, the question of levying IGST on high sea sale of goods before they are entered for customs clearance does not arise. In other words, IGST will be leviable only at the point of importation of goods into India and therefore only once.

C.9 In view of the above, it is submitted that no IGST will be leviable on the sale of goods made by the Applicant to its end customer. IGST will be payable only at the time of import and the same will be discharged by the customer at the point when duties of customs will be levied.

D. INPUT TAX CREDIT OF THE INPUTS, INPUT SERVICES, COMMON INPUT SERVICES USED IN CONNECTION WITH THE PROPOSED TRANSACTION DOES NOT HAVE TO BE REVERSED.

D.1 The sale of goods by the Applicant to its end-customer before the goods are entered for customs clearance will not qualify as an exempt supply. It is therefore submitted that input tax credit on the inputs, inputs services and common input services used in connection with the said transaction does not have to be reversed.

D.2 Relevant provisions under the Central Goods and Services Tax Act, 2017 ('CGST Act') is reproduced herein as under –
17. **Apportionment of credit and blocked credits.**

(1)

(2) *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

Section 2(47) of the CGST Act, defines the term "exempt supply" as under:

"2(47). "exempt supply" means supply of goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply."

D.3 Section 17 of the CGST Act states that credit shall be restricted only to so much of input tax as is attributable to taxable supplies including zero-rates supplies. In other words, input tax credit as is attributable to exempt supplies will have to be reversed.

D.4 As per Section 2(47) of the CGST Act, an exempt supply is that –

- (i) which attracts nil rate of tax; or
- (ii) which may be wholly exempt from tax under Section 11; or
- (iii) wholly exempt from tax under Section 6 of the IGST Act; or
- (iv) a non-taxable supply.

D.5 In terms of Section 2(79) of the CGST Act, a 'non-taxable supply' means a supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act."

D.6 In the instant case, on the supply of goods from the Applicant to the end customer, IGST is being discharged by the customer at the time of importation of the goods into India. Therefore, the said transaction is not falling within the scope of exempt supply as contemplated under Section 2(47) of the CGST Act.

D.7 Since the said supply is not an exempt supply, it is submitted that input tax credit in respect of the inputs, input services and common input services used in connection with the proposed transaction is not required to be reversed.

Applicants understanding

E.1 As explained in the above para C, the proposed transaction of sale which will be undertaken by the Applicant will qualify as a high sea sale and will not be subject to levy of IGST. IGST will be leviable on the said goods only at the point of import into India.

E.2 As explained in the above para D, the said supply will not qualify as an exempt supply falling within the purview of the provisions of the IGST Act/CGST Act and thus, ITC reversal will not be required under the provisions of the same."

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

Question -1

As per proviso to Section 5 of IGST Act regarding levy and collection of tax which reads as

"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 (5) of 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 (52 of 1962).

The same issue was deliberated by GST council vide circular no.33/2017-cus vide para-4 which reads as

"The Council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected 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."

Hence answer to question 1 is affirmative and whosoever files bill of entry at the time of importation before custom authorities for custom clearance purpose for the first time is exigible to levy of IGST tax.

Question 2:-

A:-Relevant provisions under the Central Goods and Services Tax Act, 2017 ('CGST Act') is reproduced herein as under --
17. **Apportionment of credit and blocked credits.**

(1)

(2) *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

Section 2(47) of the CGST Act, defines the term "exempt supply as under:

*2(47). "exempt supply" means supply of goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 1], or under section 6 of the IGST Act, and includes non-taxable supply."



If the above transaction is not subjected to the levy of IGST then the same will be treated as an exempt supply for the purpose of Section 17 of the CGST Act and input tax credit will have to be reversed, to the extent of inputs, input services and common input services used by the Applicant.”

04. HEARING

The case was taken up for preliminary hearing on dt.27.03.2018 with respect to admission or rejection of the application when Sh. R. Nambirajan (Advocate) alongwith Sh. Asish Philip Abraham (Advocate) and Sh. Satish Dhawan, Dy. General Manager appeared and requested for admission of application as per their contentions made in the application. The application was admitted and called for final hearing on dt.17.04.2018 when all the aforementioned persons and Sh. Nirav Karia (Advocate) appeared and made written submissions and orally contended as per their written submission. The Jurisdictional Officer, Sh. Rahul Walse, Dy. Commr. of State Taxes (E-619), Large Tax Payers Unit -II, Mumbai was present on both the occasions and has made written submissions in the matter.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is thus -

- *The applicant will be buying products from an overseas supplier who will be the applicant's related party. The said transactions will be at arm's length pricing.*
- *The applicant will be buying the Products from such overseas party against purchase orders received from the applicant's customers in India. It will be a back to back purchase order.*
- *As against the purchase order, the overseas party will export the products. The export documents such as the Bill of Lading will show the applicant as the buyer of the goods.*
- *Before the goods cross the customs frontier of India and is entered for customs clearance, the goods in question will be sold by the applicant to its customer who are known to them.*
- *The sale will be effected by executing a high sea sale agreement and by endorsing the bill of lading in the name of the end customer. Sale invoice indicating the price at which goods are sold by the Applicant to the end customer will also be issued;*
- *The sale of goods will be by the applicant to their customers who were identified at the time of placing order on the overseas related party.*
- *The Import General Manifest will be filed in the name of the end customer (final buyer) by the shipping line.*
- *The Bill of Entry will be filed by the end customer who will discharge the applicable duties of customs and IGST on the imported goods and will clear the goods for home consumption/warehousing, as the case maybe.*

In the light of the above facts, we move on to discuss the questions posed for our decision.

Question 1

The Applicant will be purchasing the goods from its overseas related party situated abroad based on purchase order received from its customers. While the goods are in transit, the goods will be sold by the Applicant to its customers before the goods are entered for customs clearance in India. Whether IGST will be leviable on such sale effected by the Applicant to customers who are known to them at the time of placing order on the overseas party?

To proceed, we would see certain clauses from the draft High Sea Sales Agreement as furnished by the applicant -



Whereas the seller has placed an order to buy certain goods from M/s. BASF Malaysia hereinafter called the foreign supplier, hereby agrees to sell the said goods to M/s. XYZ Ltd. on high sea sales.

Details

2. Payment

The buyer agrees to make payment for the goods by the seller on High Sea through advance cheque.

3. Delivery

The seller will transfer the rights & Title of the goods to the buyer by endorsing the Bill of Lading in favour the buyer after realization of the cheque.

4. Freight & Insurance

a) Freight

Considering the fact, that current shipment is on Ex-works terms, the seller shall be responsible for the payment of insurance with respect to this High Sea Sales.

b) Insurance

Considering the fact, that current shipment is on Ex-works terms, the seller shall be responsible for the payment of freight other related expenses with respect to this high sea sales.

5. Customs Clearance

In view of disposal of goods on high sea sales basis and transfer of title by the seller in favour of the buyer, the buyer shall arrange clearance of goods from Customs at its sole risk and responsibilities. The buyer shall be responsible for payment of the customs duties, clearing of goods, port expenses, demurrage container charges, octroi, inland transportation and any other related expenses.

6. Post Procedure

The Buyer shall hand over to the seller the Original exchange control copy of the Bill of Entry, copy of Customs attested invoice and other documentary proof of having cleared the material from the Customs as are required by the Seller to the Bank and or RBI or any other State or Central Govt. Agency.

7. Sales Tax

As the goods are being sold on high sea sales, no central sales tax will be charged under the provision of Central Sales Tax Act and rules thereof. However, in the event of any amendments, modifications, notifications to the contrary the liability if any shall be borne by the buyer.

8. Consideration

In consideration of this sale, the buyer shall pay to the seller (as per payment terms enumerated above in clause) as detailed below.

Sl. No.	Particulars	Amount
1.	Cost of Material	
2.	Freight	
3.	Insurance	
4.	Consideration	

This amount shall present the entire amount payable by the buyer to the seller and shall include all cost of the seller.

The Bill of Lading and draft invoices raised in the transactions have details thus -

• **Bill of Lading**

Consignor – BASF (Malaysia), Sdn. Bhd.

Consignee (not negotiable unless consigned to order) – BASF India Limited, Navi Mumbai, Maharashtra

Notify address (Carrier not responsible for failure to notify, see clause 20(1) hereof): XYZ Ltd.

Port of lading – Hamburg

Port of Discharge – Nhava Sheva

One original Bill of Lading, duly endorsed must be surrendered by the Merchant to the Carrier in exchange for the Good or a delivery order in accepting this Bill of Lading the Merchant expressly accepts and agrees to all its terms and conditions whether printed, stamped or written, or otherwise incorporated notwithstanding the non-signing of this Bill of Lading by the Merchant.

Number of original Bs/L - 3

• **Draft bill raised by the overseas seller**

Consignee – BASF India Limited, Navi Mumbai, Maharashtra

Bill to - BASF India Limited, Navi Mumbai, Maharashtra

Notify Party – XYZ Ltd. (High Sea Sale Buyer)

INCOTERM: CIP ICD Khodiyar

Draft bill raised by the Indian seller

Description Local sale

Invoice dispatched to – XYZ Ltd.

Bill to – XYZ Ltd.

Consignee – XYZ Ltd.

MOT: To Truck vehicle No.

Transporter name: Party to collect

LR No. LR Date

Road Permit

Destination: SA AND

From the detailed submissions of the applicant and the draft High Sea sales agreement submitted by them it is clear that the applicant would be importing the goods and would be



selling the goods on high seas sale basis to another buyer. In view of this we would be required to refer to the provisions of IGST Act, 2017.

First of all to confirm the nature of supply of present goods i.e. whether inter-state or intra-state we are required to refer to Chapter IV of the IGST ACT, 2017, which reads as under:-

CHAPTER IV DETERMINATION OF NATURE OF SUPPLY

Inter-State supply

7. (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—
(a) two different States;
(b) two different Union territories; or
(c) a State and a Union territory,
shall be treated as a supply of goods in the course of inter-State trade or commerce.
(2) 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.

Intra-State supply

8. (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:
Provided that the following supply of goods shall not be treated as intra-State supply, namely:—
(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
(ii) goods imported into the territory of India till they cross the customs frontiers of India; or
(iii) supplies made to a tourist referred to in section 15.

We find that Section 7(2) of the IGST Act reads as under:-

“Section 7(2) 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”.

Thus it is very clear that supply of goods imported into the territory of India till they cross the customs frontier shall be treated as supply of goods in the course of inter-state trade or commerce.

From the proposed transactions placed by the applicant before us there is not an iota of doubt that the goods of the applicant are imported goods and when the applicant is selling these goods on high seas sale basis, these goods have not crossed the customs frontiers of India. Thus clearly the transaction in these goods are in the nature of inter-state supply as per Section 7(2) of the IGST Act.

Now when we are clear that the sale on high seas of these goods are in the nature of inter-state sales, the liability to tax in respect of these goods would be as per Section 5 of the IGST Act which reads as under:-

CHAPTER III LEVY AND COLLECTION OF TAX

Levy and collection

5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on 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 per cent., 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 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.

(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

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

(4) The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:



Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

We find that proviso to Section 5(1) of the IGST Act states that “***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***”.

Thus from the above it is clear that integrated tax on goods imported into India is to be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 and Section 12 of the Customs Act, 1962 and the same is to be levied and collected at the time of import into India. The goods are considered to be imported into India only after they clear the customs frontier after compliance of applicable procedures and payment of duty as applicable.

Thus as per Section 7(2) of the IGST Act and proviso to Section 5(1) of the IGST Act it is very clear that in respect of import goods there is no levy and collection except in accordance with the provisions of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975. Section 12 of the Customs Act, 1962 provides that custom duties which includes integrated tax in respect of imported goods would be levied only at the time of import or export of goods.

Thus in case of goods sold on high seas sale basis there is no levy till the time of their customs clearance in compliance with Section 12 of the Customs Act and Section 3 of the Customs Tariff Act. In view of this the import goods sold on high seas sale basis, though they are clearly in the nature of inter-state supply would come in the category of “exempt supply” as no duty is leviable on them except in accordance with proviso to Section 5(1) of the IGST Act.

We find that in the definition of exempt supply as given in Section 2(47) of the CGST Act is as under:-

“As per Section 2(47) of the Central Goods and Services Tax (CGST) Act, 2017, “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply”.

Further we find that Section 278 of the CGST Act defines non-taxable supply which is as under:-

“As per Section 2(78) of the Central Goods and Services Tax (CGST) Act, 2017, “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act”.

Thus it is very clear that the goods which are sold on high seas sale basis are non-taxable supply as no tax is leviable on them till the time of customs clearance in accordance with and compliance of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff act, 1975.

We find that the above legal position is further reiterated and confirmed by Circular No. 3/1/2018 - IGST dated 25.05.2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing.

Question 2

Whether input tax credit will have to be reversed, to the extent of inputs, input services and common input services used by the Applicant, in case the above transaction is not subjected to the levy of IGST by treating the same as an exempt supply for the purpose of Section 17 of the CGST Act?

Yes. In view of the detailed discussions and observations in respect of Question 1 above, the goods sold on High Seas sale basis being non-taxable supply as per Section 2(78) of the CGST Act and being exempt supply as per Section 2(47) of the CGST Act, the input tax credit to the extent of inputs, input services and common input services would be required to be reversed by the applicant as per Section 17 of the CGST Act.

05. In view of the deliberations as held hereinabove, we pass an order as under :

ORDER

(under clause (xviii) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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Mumbai, dt. 21/05/2018

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

Q.1 The Applicant will be purchasing the goods from its overseas related party situated abroad based on purchase order received from its customers. While the goods are in transit, the goods will be sold by the Applicant to its customers before the goods are entered for customs clearance in India. Whether IGST will be leviable on such sale effected by the Applicant to customers who are known to them at the time of placing order on the overseas party?

A.1 Answered in the negative.

Q.2 Whether input tax credit will have to be reversed, to the extent of inputs, input services and common input services used by the Applicant, in case the above transaction is not




subjected to the levy of IGST by treating the same as an exempt supply for the purpose of Section 17 of the CGST Act?

A.2 Answered in the affirmative.

An appeal against this order will lie with the Appellate Authority, Advance Ruling Maharashtra, 15th floor, Air India Building, Madame Cama Road, Churchgate, Mumbai- 400020, as provided under Section 100 of the GST Act, 2017.

The appeal should be filed in Form GST ARA-02 accompanied by a fee of Rs. 10,000/- pertaining to each Act. It shall be signed by the appellant or his authorised representative.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax, Churchgate, Mumbai

CERTIFIED TRUE COPY

ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI