

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/23/2018-19

Date- 13.03.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri RajivJalota, MEMBER

GSTIN Number	27AAACS0730L1ZG
Legal Name of Appellant	Spaceage Syntex Pvt. Ltd.
Registered Address	Unit No. 47, Navketan Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai- 400 093
Details of appeal	Appeal No. MAH/GST-AAAR-23/2018-19 dated 13.12.2018 against Advance Ruling No. GST-ARA-13/2017-18/B-86 dated 06.08.2018
Jurisdictional Officer	Asstt./Dy. Commr., Division-X, CGST Mumbai East Commissionrate

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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.(herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-13/2017-18/B-86 dated 06.08.2018.



BRIEF FACTS OF THE CASE

- A. The Appellant preferred an application under Section 97 of the CGST Act, 2017, seeking an advance ruling to decide whether GST is applicable on sales and /or purchase of DFIA (Duty Free Import Authorisations) as serial no. 122a of the Notification No. 2/2017 – C.T. (Rate) inserted vide Notification No. 35/2017-C.T. (Rate) dated 13/10/2017 exempts duty credit scrip.
- B. During the proceedings before the learned advance ruling authority, it was submitted that both DCS (Duty Credit Scrips), and DFIA are export incentives, which exporters are entitled to under Foreign Trade Policy of Government of India. Both are covered by Chapter 4907 for GST purpose. The rationale, involved in exempting DCS from GST was clarified in terms of minutes of the 22nd meeting of GST council and Press brief issued as fall out of the said meeting. It was brought to the kind attention of the learned advance ruling authority the response received from Mr. Manish Modi to the Email sent seeking clarification with regard to scope of exemption notification 2/2017. The said response is stated below verbatim
- " 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."
- C. Even the circular no 46/20/2018- GST dated 6th June 2018 issued by Technical officer Dr. Ajay K Chikara of Tax research Unit which vide para 6 Clarifies that duty paying scrips classifiable under chapter heading 4907 will attract NIL GST, and was, and are covered by Sr. No. 122A of Notification No. 2/2017 — Central Tax rate dated 28th June 2017 as amended vide notification No. 35/2017 Central Tax (Rate) dated 13th October, 2017.
- D. The learned advance ruling authority, not agreeing with the submissions of the appellant and citing that the DCS are issued under chapter 3 of FTP whereas DFIA are issued under Chapter 4, and thus observing other procedural differences between DSC and DFIA opined that DFIA are liable to GST. This appears to be the sole ground for the advance ruling authority to hold that DFIA are not entitled to the exemption from GST.



Aggrieved by the above ruling of the AAR, the Appellant has preferred appeal on the grounds mentioned below:

Grounds of Appeal

1. The Appellant submitted that the ruling pronounced by the Advance Ruling Authority in so much as the sale or purchase of the DFIA will attract GST thereon, is completely misplaced in light of the minutes of the 22nd GST council meeting which explain that the Advance Authorizations are included in the Duty Credit Scrips.

Thus, it was prayed by the Appellant to set aside the order of the AAR, and to grant relief to them by considering their view point.

Personal Hearing

2. The Hearing in the matter was conducted on 12.02.2019, wherein Shri S.S. Gupta, C.A., appearing on behalf of the Appellant, reiterated their submissions, made at the time of the filing of appeal and shri Manoj Kumar, Supdt., appearing on behalf of the Department, contended the arguments put forth by the Appellant.

Discussion and Findings

3. We have gone through the facts of the case, the entire records, and submissions, written as well as oral, made by the Appellant as well as by the respondent. In the instant case, the moot point is, whether DFIA (Duty Free Import Authorisations) is duty credit scrips or otherwise.
4. To decide this, first, we intend to understand the meaning of Duty Credit Scrips, mentioned in the Exemption Notification No. 02/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 35/2017-C.T. (Rate) dated 13.10.2017 vide which the entry, bearing heading 4907, and having the description as Duty Credit Scrips was inserted in the said exemption notification . It is observed that the definition or meaning of the Duty Credit Scrips is not provided under the GST law. Therefore, we will resort to the Foreign Trade Policy (FTP) 2015-20 formulated by the DGFT, from where this term 'Duty Credit Scrips' has emerged and conceptualised.
5. As per the para 3.02 of the chapter 3 of the FTP, Duty Credit Scrips shall be 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 : (i) 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 inputs or goods, including capital goods, as per DoR Notification, except certain specified items. From this, it is clear that the duty credit scrips are the instruments to award incentives to the exporters with the objective of the export promotion by allowing them to set off the basic customs duty against it. It is also to be noted that the duty credit scrips are not allowed to set off the IGST/CGST/SGST liability.

6. Now, we intend to comprehend the meaning of DFIA. It is observed that the meaning of the DFIA is also not provided in the GST Law. Hence, we resort to the same FTP, which has dealt with this term, DFIA. DFIA is mentioned at para 4.25 of the Chapter 4 of the FTP, which stipulate that Duty Free Import Authorisation is issued to allow duty free import of inputs. The quantity of the inputs to be imported under DFIA is governed by the SION, issued by the DGFT. Thus, it is clear that DFIA is the instrument to incentivize the exporters by entitling them to import the goods specified under the import authorization, without the payment of customs duty.
7. Thus, it can decisively be inferred that though the duty credit scrips and DFIA have been envisaged under different chapters, and under different schemes of the export of the FTP followed by DGFT, the basic nature and functionality of both the instruments are the same i.e. to set off the Basic Customs Duty on the import of the goods.
8. Appellant, in their written submissions filed before us, have cited a Supreme Court ruling in the case of Atul Glass Industries Ltd. 1986 (25) E.L.T. 473(S.C.), wherein the Hon'ble Apex Court has held that classification of the product can also be based on functional test i.e. the function the product performs. In this case, the apex court had observed in para 8 that the functional test, which is commonly applied to such cases is, as to how the impugned product is identified by the class or section of people dealing with or using the product. This test is solicited whenever the statute does not contain any definition. The above case was in respect of the classification of the screens fitted in the motor vehicles as wind screens, rear screens and door screens. Here the apex court observed "***it is a matter of common experience that the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of consumer between the article and the need it supplies in his life. It is functional character of the article which identifies it in his mind. In the case of glass mirror, the consumer recalls primarily the reflective function of the article more than anything else. It is a mirror, an article which reflects images. It is referred to as a glass mirror only because the word glass is descriptive of the mirror in that glass has been***



used as a medium for manufacturing the mirror. The basic or fundamental character of the article lies in its being a mirror." The apex court further stated that if there was one principal fairly well settled, it was that the words or expressions must be construed in the sense, in which they are understood in the trade, by the dealer and the consumer. They, further quoted," it is they who are concerned with it, and it is the sense in which they understand it, that constitutes the definitive index of the legislative intention when the statute was enacted."

9. Coming to the present case, the appellant have argued that the DFIA is known as duty credit scrips in trade parlance. They further submitted that in the trade, various schemes issued under the Foreign Trade Policy, such as MEIS, SEIS, DFIA are understood as same, since such schemes are used for the purpose of payment of customs duty at the time of import of the goods in India. To substantiate their contention, they enclosed the letters from importers, exporters and traders of the license/scrips, and also from the association of the traders of such licenses. On perusal of the various letters issued by the importers, exporters and traders such as M/s. Ram Narayan & Company (importer of goods), M/s. Klick impex Pvt. Ltd. (Exporter dealing regularly under the schemes like MEIS and DFIA granted by DGFT), M/s. Mahesh Overseas (Exporter of goods from regularly availing the benefit of various schemes granted under DGFT, both MEIS and DFIA), M/s. Swastik Traders (Traders of various schemes(MEIS/SEIS/DFIA) granted under DGFT, involved in trade of various export incentive schemes granted to exporters since 1987), M/s. Turf Textile Export Pvt. Ltd. (Exporter of goods from India since 18 years, regularly exporting under the schemes like MEIS & DFIA), M/s. Sheroy International (engaged in trading of various export incentive schemes like MEIS/SEIS/DFIA granted by DGFT), as well as letter from the association of the traders of such licenses, it is clearly understood that the trade invariably treats the duty credit scrips and DFIA as same due to their common inherent nature, that is both the duty credit scrips issued under SEIS and MEIS, and DFIA are freely transferrable, tradable and are used for the same purpose i.e. for payment of the customs duty during the import of goods into India.
10. Once it is established that the duty credit scrips issued under SEIS and MEIS, and DFIA are construed as same in the trade parlance dealing with these licenses or scrips and widely called as duty paying scrips or licenses or duty credit scrips due to their common functionality and nature, as discussed above, applying the above quoted judgment of the apex court, it is imperative that their classification would be the same despite the differences in the technicalities of their issuance in that duty credit scrips are issued under the MEIS & SEIS envisaged in chapter 3, while the DFIA are issued under Chapter 4.



11. The above opinion, expressed by us, also draws strength from the minutes of the 22nd GST Council Meeting, the competent GST policy formulation body, wherein it was inter-alia acknowledged that one of the major difficulties faced by the exporters 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. Hence, in order to restore the lost incentive on sale of duty credit scrips, the GST on sale or purchase of these scrips was being reduced from 5% to 0%. Thus, the intention of the law maker was crystal clear in that they wanted to give immediate relief to the exporters, who were facing great deal of difficulties due to the existing GST policies along with other technical glitches in the implementation of the GST provisions, by incentivizing their export related activities. It is under this vision and objective that the GST, on the trading of the duty credit scrips, was reduced from 5% to 0% for the promotion of the export, thus restoring the incentives held by the duty credit scrips and adding potential to the marketability of such scrips. All these proposals and recommendations made in the 22nd GST council meeting is comprehensibly and rightfully applicable in the case of DFIA for the reason that the DFIA is also issued by the DGFT for the benefit of the exporters by awarding them incentives on the exports done by them. Thus, the objectives behind issuance of duty credit scrips and DFIA by the DGFT are same. Thus, it would be unfair to discriminate between the two licenses. Therefore, the tax treatment meted out to the two licenses must invariably be the same.
12. The Appellant also referred to the CBEC circular issued vide letter dated 06.06.2018 has clarified the GST rate applicable on Priority Sector Lending Certificates (PSLC), Renewable Energy Certificate (REC) and other similar scrips. The relevant para 6 &7 are reproduced below:
6. *"As such, various certificates like REC, PSLC, etc. are classified under heading 4907 and will accordingly attract GST @ 12%, though duty paying scrips classifiable under the same heading will attract Nil GST (under Sr. 122A of the Notification No. 2/2017 –Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 35/2017 dated 13.10.2017.)"*
7. *"Accordingly, in modification of Sr. No. 3 of Circular No. 34/08/2018-GST dated 01.03.2018, it is hereby clarified that Renewable Energy Certificate(REC) and Priority Sector Lending Certificates (PSLC) and other similar documents are classifiable under heading 4907 and will attract 12% GST. The duty credit scrips, however, attract NIL GST under Sr. No. 122A of Notification No. 2/2017-C.T. (Rate) dated 28.06.2017."*
13. On perusal of the para6 above of the said Circular, it can be deduced that the GST at the rate of 12% is being levied on such certificates as REC, PSLC, which are not related to the payment of the customs duty and in no way related to the export or to incentivizing the exporters of



India. Rather, these certificates incentivize the domestic entrepreneurs, who are investing capital into such field which is in the interest of the mankind and environment. Therefore, the DFIA, which are similar to the duty credit scrips in terms of the functionalities, and significance in the export promotion, cannot kept together with such REC, and PSLC by applying the rule of interpretation of *Noscitur a sociis* into the phrase "*As such, various certificates like REC, PSLC, etc.....*" of the circular cited above in para 12.

14. Thus, on plain reading of the para 6 & 7 of the said circular, reproduced above, it is conspicuous that the Board, while clarifying the issue of classification of the various certificates and scrips and taxability thereon, has used the word the 'duty paying scrips' and 'duty credit scrips' interchangeably in para 6 & respectively. Thus, assuming the significance and relevance of the each word and phrase, that the legislation contains and on the belief that each and every word or phrase in any legislation has to be given the significance and weight that they deserve, we are compelled to interpret that the both the words duty paying scrips and duty credit scrips are to be construed same.
15. Thus, from the above discussion, we conclude that the DFIA, also popularly known as duty paying scrips in the trade parlance, as discussed above, is equivalent to the duty credit scrips, as far as the tax treatment thereon, are concerned and accordingly, there will be nil rate of GST on the sale or purchase of DFIA as provided in Sr. 122A of the Notification 02/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 35/2017-C.T. (Rate) dated 13.10.2017.

Hence, we pass the following order:

Order

We, hereby, set aside the ruling pronounced by the AAR and hold that the No GST is applicable on the sale or purchase of DFIA, as provided in Sr. 122A of the Notification 02/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 35/2017-C.T. (Rate) dated 13.10.2017.

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(RAJIV JALOTA)
MEMBER



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(SUNGITA SHARMA)
MEMBER

- Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra

certified true copy
Chauhan