


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/04/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/31)

Date : 17.03.2020

Name and address of the applicant	:	M/s. Sterlite Technologies Ltd
GSTIN of the applicant	:	24AAECS8719B1ZI
Date of application	:	24.5.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) Supply of goods to the customers located outside India under 'Bill to Ship to' Model from vendor located outside India.
Date of Personal Hearing	:	5.3.2020
Present for the applicant	:	Shri Nitin Shah, Advocate

BRIEF FACTS OF THE CASE:

M/s Sterlite Technologies Limited, a company Block 6, Magnet Corporate Park, Nr. Sola Flyover, Thaltej, Ahmedabad (hereinafter called the applicant) is a registered person under GST having GST Number -24AAECS8719B1ZI.

2. They are engaged in the Development and supply of software with respect to telecommunication qua wi fi service management platform. OSS/BSS alongside packet core with flexibility of modular and pre integrated offerings etc. and trading in hardware. They procure requisite hardware from the vendor located within India or outside India) on payment of applicable duties/taxes. Such hardware is sold as per the requirement of the customer on payment of GST, except in case of export.

3. The applicant proposed to undertake transaction and supply of hardware, commercially known as 'Merchant Trade Transaction', wherein the applicant will receive an order from the customer located outside India and as per their instruction, Vendor would directly ship the goods to customer located outside India. Vendor would issue invoice on applicant against which payment would be made in foreign currency and applicant would raise invoice on customer and would receive consideration in foreign currency. In the above transaction, goods would not physically come into India, but would move from place outside India to another place outside India.

4. The applicant has in their application dated 24.5.2018 raised the following issues for determination before the Authority:

- i) Whether GST is payable on goods procured from vendor located outside India in a context where the goods so purchased are not brought into India?
- ii) Whether GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises?

PERSONAL HEARING:

5. Personal hearing was held on 21.6.2018, 12.7.2018 and 5.3.2020. Shri Nitin Shah Advocate appeared on behalf of the applicant. In their submission dated 25.5.2018, they submitted that their company is engaged in rendition of software development services qua wi fi service management platform, OSS/BSS alongside packet core with flexibility of modular and pre integrated offerings etc. In addition they also under supply of IT hardware to their customers. They submitted that they propose to undertake 'Merchant Trade Transaction' wherein they would received an order from customer located

outside India; back to back order would be placed by them to supplier located outside India; goods would be directly shipped by vendor outside India to customer located outside India; payment would be made in foreign currency to vendor and applicant would receive foreign currency from customer. They therefore wished the Authority for Advance Ruling to determine if any GST is payable on goods procured from vendor outside when goods purchased are not brought into India and whether GST would be payable on goods sold to customer located outside India.

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

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

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

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

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

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

(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and .

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

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

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

SECTION 12:

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

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

SECTION 15: Date for determination of rate of duty and tariff valuation of imported goods. –

(1) Rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

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

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

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

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

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

12. We find that the issue has already been decided by Authority for Advance Ruling, Kerala vide ORDER No. CT 12275/18-C3 DATED 26/03/2018 in the case of M/s Synthite Industries Ltd., Ernakulam, Kerala. It was held that “*the goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India; The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands as the goods are not imported into India at any point.*”

13 We find that in the context of ‘High Sea Sales’, Circular No. 33/2017 Customs dated August 1, 2017 has been issued clarifying that sub section (12) of section 3 of the Customs Tariff Act, 1975 specifies that 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 custom clearance purposes. The relevant portion of the Circular is reproduced below:

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.

13.1 The above circular is applicable in the present case. Similarly, we find that, where, Bill of Entry/import declarations are not being filed with respect to the goods so procured, GST would not be leviable.

14. With regards to the second query regarding leviability of GST on outward supply from place of vendor to customer, it is to mention that the thumb-rule for determining the taxability of any transaction is to ascertain whether the transaction tantamount to ‘supply’ in terms of the provisions of law. The term ‘supply’ has been defined at Sec. 7 of the CGST Act, 2017 which reads as under:

(1) For the purposes of this Act, the expression “supply” includes —

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; [and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

In the instant case, the applicant is selling goods for a consideration in the course or furtherance of business and as such the transaction tantamount to ‘supply’ in terms of the definition of ‘supply’.

14.1 Once the test of supply is met with, the next step is to determine whether the same is an Intra-state supply or inter-state supply. In this regard it is pertinent to examine the provisions of Section 7 of the IGST Act, 2017 which reads as under:

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.

(3) Subject to the provisions of section 12, supply of services, 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 services in the course of inter-State trade or commerce.

(4) *Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*

(5) *Supply of goods or services or both,—*

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

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

14.2 The above statute indicates that in the event that the supplier is located in India and the place of supply is outside India, such supplies shall be treated as Inter-stated supplies. The place of supply in the instant case would be governed by the provisions of Sec. 10 of the IGST Act, 2017 of which the relevant text reads as under:

10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—

a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient

In the instant case, it is an undisputed fact that the supply involves movement of goods and therefore the place of supply would be the termination for delivery to the recipient. The goods under consideration are supplied to overseas buyers as declared by the applicant and as such the place of supply will be a place outside India. Further, the supplier is the applicant who has declared the principal place of business within India and issues the invoices for sale of such goods.

14.3 The above indicates that the supplier is located in India and the place of supply is outside India and as such the same would be Inter-state supply in terms of the provisions of Sec. 7(5) of IGST Act, 2017. Thus, it is very clear that the transaction undertaken by the applicant tantamount to supply and is an Inter-state supply. Having travelled thus far, it is obvious that IGST will be leviable unless the goods are exempted or are zero-rated supplies which have been defined as export of goods or services in terms of the provisions of Sec. 16 of the IGST Act, 2017. In the instant case the applicant has not stated the nature of goods and has not declared that such goods are exempted under any notification issued under the powers of Sec. 11 of the CGST Act, 2017 and the corresponding State Act or Section 6 of the IGST Act. Thus, the only possibility of goods not subject to levy of IGST would be the circumstances where the goods are exported.

14.4 The term 'export of goods' has been defined under sub section 5 of Section 2 of IGST Act, 2017 which reads as under:

Export of goods would mean—'With its grammatical variations and cognate expressions, means taking goods out of India to a place outside India'.

The above definition indicates that the act of taking goods out of India to a place outside India qualifies as export. In the instant case, the goods have not crossed the Indian customs frontier and as such it is clear that the goods are not physically available in the Indian territory. When the goods are not available in the Indian territory, the question of taking goods out of India does not arise. Thus, the subject transaction does not qualify as export of goods.

14.5 In view of the above, it appears that the transaction is covered under the ambit of Inter-state supply and is neither exempted nor covered under export of services. Thus, the theory of elimination takes us to the conclusion that such supplies will be subject to levy of IGST.

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

RULING

- i) GST is not payable on goods procured from vendor located outside India, where the goods so purchased are not brought into India?
- ii) Applicable GST is payable on goods sold to customer located outside India ,where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises

(Mohit Agrawal)
Member

(Sanjay Saxena)
Member

Place : Ahmedabad

Date : 17.03.2020