

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
---	---

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2019/2
(IN APPLICATION NO. Appellate Advance Ruling/SGST & CGST /2018/AR/5)

Date 02.01.2019

Name and address of the Appellant	:	M/s. Sapthagiri Hospitality Private Limited 17-18, Saptagiri Complex, Opp. The Gateway Hotel, Near Akota Garden, Akota, Vadodara – 390 020.
GSTIN of the Appellant	:	24AAMCS8870K1ZN
Advance Ruling No. and Date	:	GUJ/GAAR/RULING/2018/14 dated 30.7.2018
Date of filing appeal	:	06.10.2018
Date of Personal Hearing	:	19.12.2018 01.01.2019 02.01.2019
Present for the applicant	:	Shri Dhruvank Parikh, CA Shri Bhargav Panchal, CFO of M/s. Sapthagiri

The appellant, M/s. Sapthagiri Hospitality Private Limited has constructed a hotel in the non-processing zone of Dahez SEZ on the land allotted to it and started hospitality services therein. The appellant submitted that the hospitality services provided by them *inter-alia* includes providing rooms on tariff, supplying food/beverages, laundry services, housekeeping services etc. within the premises of the hotel.

2. The appellant filed an application for Advance Ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’) and sought ruling on following questions-

(i) The hotel being located in non-processing zone of Dahez Special Economic Zone whether liable to pay GST on all the services provided by it to the clients located in SEZ which inter-alia included supply of services by way of providing accommodation services, supplying food and beverages and supplying services ancillary to providing accommodation services? and

(ii) Under extreme circumstances, if the hotel is required to provide accommodation services to a visitor other than a visitor located in SEZ, whether GST is required to be paid?

3. The GAAR, vide Advance Ruling No. GUJ/GAAR/RULING/2018/14 dated 30.07.2018, ruled as follows :-

(i) The supplies made by M/s. Sapthagiri Hospitality Private Limited, 17-18, Saptagiri Complex, Opp. The Gateway Hotel, Near Akota Garden, Akota, Vadodara- 390 002 (GSTIN 24AAMCS8870K1ZN), a SEZ Co-developer, from their hotel located in non-processing zone of Dahez Special

Economic Zone to the clients located in Special Economic Zone for authorized operations will be treated as zero rated supplies under the provisions of Section 16(1) of Integrated Goods and Service Tax Act, 2017 read with Section 2(m) of SEZ Act, 2005

- (ii) *The applicant is liable to pay GST on the services from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located outside the territory of Special Economic Zone under the provisions of Section 5(1) of Integrated Goods and Service Tax Act, 2017.*

4. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal on 06.10.2018, along with request for condonation of delay in filing the appeal.

5. The appellant submitted that it has no objection to the answer given by the GAAR in response to question no. 1. However, the appeal has been preferred against answer given by GAAR in response to question no. 2.

6. We have considered the submissions made by the appellant in the appeal as well as at the time of personal hearing held on 02.01.2019.

7.1 The appellant has submitted that they filed appeal in time before the Chief Commissioner, Vadodara, who on 03.10.2018 informed about the correct authority where appeal is required to be filed, which has caused the delay. The appellant requested to condone the delay and requested to admit the appeal.

7.2 The appellant has submitted the date of communication of the Advance Ruling as 18.08.2018, whereas records of postal authorities indicate that the said Advance Ruling was delivered to the appellant on 14.08.2018. A copy of letter F.No. IV/16-60/CCO/T/AAR/2017 dated 20/24.9.2018 of the Assistant Commissioner, Chief Commissioner's Office, CGST & CE, Vadodara Zone, submitted by the appellant, indicates that the appellant had filed appeal with the office of the Chief Commissioner, CGST & CE, Vadodara on 17.09.2018.

7.3 There is delay of 22 days in filing of this appeal. It is evident that a part of the delay is caused due to filing of appeal with the wrong authority. We also take into consideration the fact that the Goods and Services Tax is a new tax regime and there may be *bona-fide* mistake on the part of registered person in locating the office of the Appellate Authority for Advance Ruling. Therefore, the delay in filing of appeal in this case is condoned in exercise of the powers contained in proviso to the sub-section (2) of Section 100 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017').

8.1 The appellant has submitted that the GST is a destination based consumption tax and this principle needs to be kept in mind. It has been submitted that the actual destination and consumption as well as enjoyment of services is the place where hotel is located i.e. Dahej, in terms of Section 12(3) of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the IGST Act, 2017). As the supply has been made in SEZ, no IGST will be applicable.

8.2 We have examined the argument. The reference in this regard may be made to the provisions of Section 16 of the IGST Act, 2017, pertaining to the 'Zero Rated' supply. Sub-section (1) of Section 16 of the IGST Act, 2017 reads as follows :-

“Zero rated supply.16.— (1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

It is evident that clause (b) of sub-section (1) of Section 16 of the IGST Act, 2018 provides that supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit, is covered under 'zero rated supply'. Thus, to be qualified as 'zero rated' supply, the law specifically refers the supply 'to' SEZ developer/unit and not 'to or by' SEZ developer / unit. Therefore, the supply of service by the appellant would be liable to Goods and Services Tax, unless specifically exempted by law.

8.3 Here the moot point is as to whether the supply has been made to SEZ unit or the same is to be treated as a DTA supply. There is no doubt that supplies made by units or developers / co-developers of SEZ are treated as inter-state supply under Section 7(5) of the IGST Act, 2017 and are liable to IGST under Section 5(1) of the IGST Act, 2017. Out of these, only supplies made to SEZ developer / unit for authorized operations have been made zero rated, other are liable to IGST. This issue has been discussed by the GAAR at Para 5 of the Advance Ruling wherein it is held that rendering of services from SEZ to DTA does not qualify as Zero Rated supply in terms of Section 16 of the IGST Act, 2017, therefore, SEZ Unit/ developer making inter-state supply to DTA would be liable to pay IGST under IGST Act. Since the supply is admittedly to visitors from DTA, the same will be liable to IGST.

9.1 The appellant has referred to Section 53 and 51 of the Special Economic Zones Act, 2005 (herein after referred to as the 'SEZ Act, 2005'). It has been submitted that the services have been provided directly in relation to immovable property in the SEZ and such services are part of the authorized operation of the SEZ as is evident from the Letter of Permission. It has been submitted that the IGST should not be applicable on the services provided in SEZ to persons other than SEZ units as the said services are received within the SEZ, which is deemed to be territory outside India. It has also been submitted that in view of Section 53(1) of the SEZ Act, 2005, the provisions of IGST Act, 2017 would not apply to the services rendered in the SEZ. It has also been submitted that Section 51 of the SEZ Act, 2005 provides that the provisions of SEZ Act will have effect notwithstanding anything inconsistent therewith in any other law.

9.2 The provisions of Section 53 of the SEZ Act, 2005 reads as follows :-

“53 (1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962):

PROVIDED that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.”

9.3 It is observed that sub-section (1) of Section 53 of the SEZ Act, 2005 provides that a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations. (emphasis supplied). It appears that the appellant has misconstrued that the said sub-section provides that a Special Economic Zone shall be deemed to be a territory outside the territory of India, that too for all purposes and no Indian Law (Including IGST Act, 2017) is applicable in SEZ except the SEZ Act, 2005 and the Laws which are specifically made applicable by SEZ Act, 2005.

9.4 The said understanding of the appellant does not appear to be correct. In fact, the sub-section (1) of Section 53 of the SEZ Act, 2005 provides a deeming fiction whereby the Special Economic Zone shall be deemed to be a territory outside the customs territory of India and that too for the specific purposes of undertaking the authorized operations. The term “customs territory” cannot be equated to the territory of India. Further, the interpretation advanced by the appellant would lead to a situation where a Special Economic Zone would not be subject to any laws of India whatsoever. The entire SEZ Act, 2005 would be rendered redundant since it is stated to extend to the whole of India. Section 51 of the SEZ Act, 2005 provides for overriding effect in case there is anything inconsistent contained in any other law. However, no inconsistency between the provisions of the SEZ Act, 2005 and IGST Act, 2017 or CGST Act, 2017 / GGST Act, 2017 has been pointed out by the appellant.

9.5 Therefore, the reliance placed by the appellant on Section 53 and 51 of the SEZ Act, 2005 in support of contention that their activity in SEZ is not liable to IGST, is not acceptable.

10.1 The appellant has cited Advance Ruling issued by Kerala Advance Ruling Authority and Circular No. 33/2017-Customs dated 01.08.2017.

10.2 It is observed that the issue involved in the Advance Ruling issued by the Kerala Advance Ruling Authority in case of Synthite Industries Ltd. was related to applicability of IGST on transaction by an Indian entity, who, after buying the goods from a seller abroad is asking the seller to directly ship those goods to a person located in another country. Circular No. 33/2017-Customs dated 01.08.2017 clarified the issue of leviability of IGST on High Sea Sales of imported goods and point of collection of IGST thereon.

10.3 As the issue involved in the present case is regarding services provided by a Hotel located in non – processing zone of SEZ, issue involved is totally different than the issue involved in the case of Synthite Industries Ltd. (*supra*) and the issue clarified vide Circular No. 33/2017-Customs dated 01.08.2017. We find that the Advance Ruling and Board Circular cited have no applicability in this case

11.1 The appellant has referred to Section 53 of the SEZ Act, 2005, which provides that a SEZ shall be deemed to be a port, airport, inland container depot, land station and customs stations under section 7 of the Customs Act, 1962. The appellant has also referred to Circular No. 46/2017-Cus dated 24.11.2017 and Circular No. 3/1/2018-IGST dated 25.05.2018 and submitted that applying the analogy of the clarifications issued in the said Circular, IGST should not be applicable for the services consumed in Special Economic Zone itself, whether supplied to a unit or developer or any other person as the services provided by the appellant are authorized operations as per Letter of Permission.

11.2 Section 53(2) of the SEZ Act, 2005 creates a deeming fiction whereby a SEZ is deemed to be a port, airport, inland container depot, land station and customs stations under section 7 of the Customs Act, 1962. On the other hand, Circular Nos. 46/2017-Cus dated 24.11.2017 and 3/1/2018-IGST dated 25.05.2018 clarified applicability of IGST / GST on goods transferred / sold while being deposited in a warehouse registered under section 57 or 58 or 58A of the Customs Act, 1962 (customs bonded warehouse), without payment of duty. The purpose of appointing any port, airport etc. under Section 7 of the Customs Act, 1962 is quite different than the purpose of licensing any warehouse under Section 57, 58 or 58A of the Customs Act, 1962. Therefore, the clarification issued for customs bonded warehouse are not applicable to the appellant even if a SEZ is deemed to be a port etc. under Section 7 of the Customs Act, 1962. Further, the appellant is engaged in providing services whereas the customs port etc. are appointed under Section 7 of the Customs Act, 1962 and customs bonded warehouses are licensed under Section 57, 58 or 58A of the Customs Act, 1962 in respect of import of export of goods and not of services.

11.3 Therefore, the reliance place by the appellant on Section 53(2) of the SEZ Act, 2005 and Circular Nos. 46/2017-Cus dated 24.11.2017 and 3/1/2018-IGST dated 25.05.2018 in their appeal, is not acceptable.

12. In view thereof, we confirm the Advance Ruling No. GUJ/GAAR/RULING/2018/14 dated 30.07.2018 of the Gujarat Authority for Advance Ruling to the extent it has been appealed before us and reject the appeal filed by M/s. Sapthagiri Hospitality Private Limited.

(Ajay Jain)
Member

(Dr. P.D. Vaghela)
Member

Place : Ahmedabad
Date : 02.01.2019.