

THE APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, UTTAR PRADESH
4, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW - 226 010.

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Appeal Order No. 14/AAAR/_ 10_/ 03/2021

Date: 10.03.2021

Before the Bench of:-

- 1. Shri Ajay Dixit,**
Member, Central Tax
- 2. Smt. Amrita Soni,**
Member, State Tax

Legal name of the Appellant	M/s SANGAL PAPERS LTD.
Trade Name of the Appellant	M/s SANGAL PAPERS LTD.
GSTIN Number	09AACCS4253J2Z5
Registered address/Address provided while obtaining user ID	Sangal Papers Ltd, 22 Km Meerut-Mawana Road, Mawana, Meerut
Order of Advance Ruling Against which the appeal is filed	Order No. 63/2020 dated 10.07.2020 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UPGST Act") by M/s. Sangal Papers Ltd, 22 Km Meerut-Mawana Road, Mawana, Meerut, Uttar Pradesh (hereinafter referred to as the "Appellant") against the Advance Ruling Order No. UP 63/2020 dated 10.07.2020 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017.

Brief Facts of the Case

1) M/s Sangal Papers Ltd, 22 Km Meerut-Mawana Road, Mawana, Meerut, Uttar Pradesh (the Appellant) is a registered assessee under GST having GSTN: 09AACCS4253J2Z5.

2) The Appellant is a limited company engaged in manufacturing of paper out of indigenous and imported waste paper. The Appellant imports waste paper from various countries and Customs duty is paid on the same on CIF value. Once the paper is manufactured, the applicant shows value of goods and freight separately on the invoice and pays GST on the invoice value.

3). Accordingly, the Appellant has submitted an application dated 06.02.2020, before the Authority for Advance Ruling Uttar Pradesh and sought Advance Ruling as follows : -

- i. *When GST has been paid on the freight in the case of indigenous supplies, whether the supplier is required to pay again GST on the freight under RCM.*
- ii. *When the GST has been paid on the ocean freight in the case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability is there under RCM.*

4). The Authority for Advance Ruling, vide Order No. 63/2020 dated 10.07.2020 ruled that:

- i. *In term of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (as amended) the applicant is liable to pay GST under reverse charge mechanism, on the freight paid.*
- ii. *The applicant is liable to pay IGST on transportation of goods by vessels under Reverse Charge Mechanism (RCM) under Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017, as amended.*

5) Being aggrieved with the Order No. 63/2020 dated 10.07.2020, the Appellant filed this appeal application before us.

Grounds of appeal submitted by the Appellant:-

6) The Appellant made the following submissions:

6.1) Citing Hon'ble Gujarat High Court Order, in the case of M/s Mohit Minerals Pvt Limited Vs. UOI, the Appellant has contended that by virtue of Section 5(3) of the IGST Act, the liability to pay tax can be shifted from provider of supply to the recipient on reverse charge basis. However, as per the impugned

Entry No. 10 of the Notification No. 10/2017-IT (Rate), the liability has been shifted on the importer and not on the recipient and thus the entry is ultra virus to Section 5(3).

6.2) No tax is leviable under the IGST Act on Ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India.

6.3) The goods imported on CIF basis, importer is nowhere connected with ocean freight services provided by freight forwarder and it can be constructed that scope of the charging section cannot be widen and person who is not included in the scope of charging section, then the same cannot be taxed.

6.4) A subordinate legislation cannot cross the limits of the parameters laid down by the Act. Further, Notification cannot go beyond nor be repugnant to the statute and it cannot extend beyond the scope or ambit of the parent act.

6.5) It is very clear that the transportation charges would be composite supply and hence co-joint reading with Section 8 of the GST Act, principal supply would goods and it cannot be treated as distinct supply.

6.6) Insurance and freight are added to the value of the goods and the GST is paid as a composite supply. Accordingly there should not be further requirement for payment of the GST under the RCM as it would be tantamount double taxation.

7) The appellant was granted personal hearing on 10th March 2021. Sh. R.C. Gupta, Advocate and Sh. Sanjay Kumar Agarwal, G.M. (Finance), both Authorized Representative, appeared in personal hearing on behalf of the party i.e. M/s Sangal Papers Ltd.

During the course of personal hearing they reiterated the submissions already made vide appeal application dated 02.12.2020. They also filed additional submissions along with some supporting documents. They have nothing more to add.

DISCUSSION AND FINDING

8) We have gone through the submissions made by the appellant and examined the detailed explanation submitted by them. We observed that the appeal is mainly based upon the following points viz:-

- A. The liability to pay tax can be shifted from provider of supply to the recipient on reverse charge basis. However, as per the impugned Entry No. 10 of the Notification No. 10/2017-IT (Rate), the liability has been shifted on the importer and not on the recipient and thus the entry is ultra virus to Section 5(3). To vindicate its claim the appellant has relied upon the judgment of Hon'ble Gujarat High Court in case of M/s Mohit Minerals Pvt Limited Vs. UOI.
- B. Once Tax has already been paid on the freight again demanding tax on the same would tantamount to double taxation.

9) As regard to the ocean freight we observe that the question posed by the Appellant before the Advance Ruling Authority was that *"When the GST has been paid on the ocean freight in the case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability is there under RCM"*.

10) In this regard we observe that the service, supplied by the foreign shipping entity of transportation of goods in a vessel to a port in India, is an 'inter-state supply' in terms of section 7 of the IGST Act, 2017. Further, the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (as amended), issued in terms of Sub-Section (3) of Section 5 of the IGST Act, 2017, specifies the person liable to pay tax under reverse charge mechanism.

11) The Entry No.10 of the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (as amended) reads as under:-

SL. No.	Category of Supply of Services	Supplier of service	Recipient of service
10	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

In view of above, we are in unison with the Advance Ruling Authority that in terms of the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017

(as amended), in the case of import of goods on CIF basis, the appellant is liable to pay GST on the component of Ocean freight paid by the foreign supplier to the shipping company.

12) We further observe that the service of transportation of goods is taxable both in case of imports as well as exports for domestic shipping line and for import for foreign shipping line. Since exports by domestic shipping line are already zero rated, the ITC will not be available to Indian shipping lines if the service of inward transportation of goods is not made taxable in India. Accordingly, Tax under RCM gives a level playing field to the domestic shipping lines. Moreover the goods are transported from a place outside India up-to the customs station in India for the importer and therefore, he is directly or indirectly the recipient of service. We also observe that the CIF value is adopted under Customs Valuation Rules for the purpose of calculation of Customs duty on 'Goods' whereas the GST is being demanded, under reverse charge mechanism, only for the service portion involved in the transaction.

13) The appellant has relied upon the Judgment of Hon'ble Gujarat High Court in the case of M/s Mohit Minerals Pvt. Ltd Vs. Union of India, however, we observe that the said judgment has been challenged by the department in the Hon'ble Supreme Court of India and decision in the matter is pending there.

14) In view of this we uphold the ruling given by the Advance Ruling Authority of Uttar Pradesh, issued vide Order No. 63/2020 dated 10.07.2020 on question number 2 of the appellant. However this ruling will be subject to the outcome of the SLP filed by the department against the Judgment of Hon'ble Gujrat High Court, in the case of M/s Mohit Minerals Pvt. Ltd Vs. Union of India.

15). Now coming to the question that when the GST has been paid on the freight in the case of indigenous supplies, whether the supplier is required to pay again GST on the freight under RCM, we observe that the issue has been clarified vide Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (as amended). As per the entry no. 01 of the said Notification:-

SL. No.	Category of Supply of Services	Supplier of service	Recipient of service
1	Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to- a. Any factory registered under	Goods Transport Agency (GTA)	a. Any factory registered under or governed by the Factories Act, 1948(63 of 1948);or

	<p>or governed by the Factories Act, 1948(63 of 1948);or</p> <p>b. any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>c. any co-operative society established by or under any law; or</p> <p>d. any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>e. any body corporate established, by or under any law; or</p> <p>f. any partnership firm whether registered or not under any law including association of persons; or</p> <p>g. (g) any casual taxable person.</p>		<p>b. any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>c. any co-operative society established by or under any law; or</p> <p>d. any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>e. any body corporate established, by or under any law; or</p> <p>f. any partnership firm whether registered or not under any law including association of persons; or</p> <p>g. any casual taxable person, located in the taxable territory.</p>
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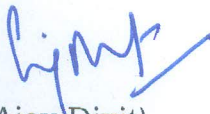
16). Accordingly, we are of the opinion that the Notification No. 13/2017- CT (Rate) dated 28.06.2017 (as amended) is squarely applicable on the Appellant and they are liable to pay the GST on the freight paid, under the reverse charge mechanism. As regard to the double taxation we are in unison with the Advance Ruling Authority that this is a revenue neutral exercise, having no additional financial impact on the appellant and it is outside the purview of the Advance Ruling Authority.

RULING

Question No. 1- As regard to the question of the Appellant that when the GST has been paid on the freight in the case of indigenous supplies, whether the supplier is required to pay again GST on the freight under RCM, we are of the opinion that the ruling given by the Advance Ruling Authority, Uttar Pradesh is just and proper and needs no interference.

Question No. 2- The question number 2 of the instant appeal is directed against the Order No. 63/2020 dated 10.07.2020 passed by the Advance Ruling Authority. The question involved in the impugned order is "when the GST has been paid on the ocean freight in the case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability is there under RCM". In this regard it has been informed that the aforesaid levy is the subject matter of an appeal before the Hon'ble Supreme Court in SLP (C) Nos. 16012/2020 and 15995/2020 and the Hon'ble Apex Court has, vide order dated 06.01.2021, issued notices in the matter.

In view of the fact that the very same matter is pending consideration of the Hon'ble Supreme Court, it would be inappropriate for this Court to pass any order in the instant case.



(Ajay Dixit)

Member AAAR

CGST



(Amrita Soni)

Member AAAR

SGST

To,

M/s Sangal Papers Ltd,
22 Km Meerut-Mawana Road,
Mawana, Meerut, Uttar Pradesh.

APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTAR PRADESH

Copy to –

1. The Joint Commissioner, CGST & Central Excise, Audit Commissionerate, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Commissioner, CGST & CX, Meerut, Uttar Pradesh.
4. Through the Additional Commissioner, Commercial Tax, ..*Meerut*....., Uttar Pradesh to jurisdictional tax assessing officers.