


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2024/08
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/20)

Date: - 16.04.2024

Name and address of the applicant	:	M/s Abans Alternative Fund Manager LLP-IFSC (for short –‘applicant’), Unit No. 1108A, Block 13B, Zone 1, Gift SEZ, Gandhinagar- 382 355
GSTIN of the applicant	:	24ABOFA6693E1Z7
Jurisdiction Office	:	Center Commissionerate - Gandhinagar Division - Gandhinagar Division Range -II
Date of application	:	09.06.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b), (e)
Date of Personal Hearing	:	27.2.2024
Present for the applicant	:	Shri Devam S Sheth, CA

Brief facts

M/s Abans Alternative Fund Manager LLP-IFSC (for short – ‘applicant’), Unit No. 1108A, Block 13B, Zone 1, Gift SEZ, Gandhinagar- 382 355, is engaged in providing the services of holding securities and other assets of trusts and funds and similar financial entities, falling under the SAC code 997172. The applicant was granted approval by KASEZ vide letter no. KASEZ/DCO/Gift/SEZ/II/38/2021-22 dated 12.8.2021. Their GST registration number is 24ABOFA6693E1Z7.

2. The applicant acts as an Investment Manager for managing the schemes floated by the Category-III Alternative Investment Fund (AIF), registered under the International Financial Services Centres Authority Act, 2019 and to have a continuing interest in the said Alternative Investment Fund (AIF) as specified by IFSCA from time to time.

3. The applicant has availed the service from Advocate Prajesh Shah towards execution of lease agreement for premise in GIFT City, Gandhinagar. The applicant is the fund manager of Abans Investment Trust.



4. Briefly, the facts leading to the applicant seeking a ruling is as under:

- in terms of sections 7(5) and 16 of the IGST Act, 2017, supply of services made to an SEZ unit for carrying out the authorised operation in an SEZ is considered as zero-rated supply; that supply to SEZ is considered as an inter-state supply; that when the same is used for authorized operations it will be zero-rated;
- that CBIC Circular No 48/22/2018-GST dated 14.06.2018, clarifies treating of supplies to SEZ units as inter-state supplies;
- that it is the policy of the Government to allow tax free procurement of goods and services in an SEZ;
- that in terms of section 51 of the SEZ Act 2005, the provisions of SEZ Act would have overriding effect on provisions of any other legislation including taxation laws;
- that rule 5(5)(a) of the SEZ Rules, 2006, provides exemption to SEZ from State Goods and Services Tax [SGST];
- that in terms of Rule 30(1) of SEZ Rules, 2006, the Domestic Tariff Area [DTA] supplier supplying services to a Unit shall clear the services, as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 either under bond or legal undertaking or under any other refund procedure permitted under GST laws;
- the applicant is entitled to receive the supplies from DTA either under LUT or on payment under RCM in terms of Section 16 of the IGST Act 2017;
- that a combined reading of the SEZ Act, the Rules reveal that the RCM notifications will not apply;
- that the default list of services approved by the Department of Commerce (F. No. D.12/19/2013-SEZ dated 02.01.2018) for authorized operations specifically includes Legal Consultancy services;
- that there can be no liability under the notification No. 13/2017-CT(R) on an SEZ unit, since the service received by them would be considered as a zero-rated service;
- the applicant is entitled to avail the option available u/s 16, *ibid* for zero-rated supplies by providing an LUT for the supplies; that the applicants are not required to discharge GST under RCM but can receive supplies on the basis of an LUT as an option;
- that as an alternate argument, even if it is assumed that RCM notifications are applicable, then also the SEZ unit, in terms of Section 16 could exercise the option to provide LUT for supplies made from DTA to an SEZ unit;
- that they wish to rely on letter F. No 334/335/2017-TRU dated 18.12.2017, regarding RCM liability on procurement of service by International Financial Services Centre, SEZ which clarifies that "a Unit in SEZ or SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of IT provided the actual recipient ie, unit in SEZ or SEZ developer, furnishes a Letter of Undertaking;
- that notification No. 18/2017-IT(Rate) dated 05.07.2017, exempts services imported by an SEZ unit for authorized operations, from the whole of the integrated tax leviable u/s 5, *ibid*;
- that notification No. 18/2017-IT(R), which exempts services is applicable not only for services procured from overseas service providers but from services procured within India as well;
- a unit in SEZ can procure service for use in authorised operation without payment of Integrated Tax provided the actual recipient i.e. SEZ unit, furnishes a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT; that the appellant will not be required to pay any GST under RCM on the advocate services received, if applicant furnishes LUT;
- that they wish to rely on the case of
 - GMR Aerospace Engineering Limited[2019 (8) TMI 748];
 - M/s Metlife Global Operations Support Center Private Limited [2020-VIL-560-Cestat-Del-ST];
 - M/s Portescap India Private Limited vide MAH/AAAR/DS-RM/15/2022-23 dated 13.01.2023



5. In view of the foregoing, the applicant is before us seeking a ruling on the below mentioned question *viz*

1. Whether an applicant which is a SEZ Unit is required to pay tax under reverse charge mechanism on services received from advocate by virtue of Notification No. 13/2017 - Central Tax Rate (as amended time to time)?

2. If, answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?

6. Personal hearing in the matter was held on 27.2.2024 wherein Shri Devam S Sheth, CA appeared on behalf of the applicant and reiterated the facts as stated in the application.

6.1. The applicant thereafter vide his email dated 8.4.2024, addressed to the registry informed that there was a minor correction in the first question which was submitted and that they would like a ruling on the below mentioned revised questions *viz*

1. Whether an applicant which is a SEZ Unit is required to pay tax under reverse charge mechanism on services received from advocate by virtue of Notification No. 10/2017 – Integrated Tax Rate (as amended time to time)?

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. Before advertng to the submissions, we would like to reproduce the relevant provisions/notifications for ease of reference:



➤ Integrated Goods and Services Act 2017

○ **Section 5. Levy and collection.-**

(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.

○ **Section 7. Inter-State supply.-**

(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.

○ **Section 16. Zero rated supply.-**

(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 ¹[for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2)

²[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non- realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

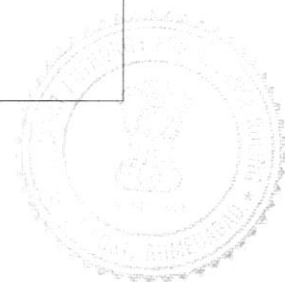
➤ Notification No. 10/2017-Integrated Tax (Rate)[as amended] [relevant extracts]

dated : 28.06.2017

-In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Table

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
3	[Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. Explanation.- "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and	An individual advocate including a senior advocate	Any business entity located in the taxable territory.



	includes representational services before any court, tribunal or authority.]	or firm of advocates.	
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➤ **Notification No. 18/2017-Integrated Tax (Rate)** dated 5.7.2017

In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do and on the recommendations of the Council, hereby exempts services imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017).

➤ **Special Economic Zones Act, 2005**

○ **Section 2 :Definitions.**

(o) "import" means--

- (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

○ **Section 7 :Exemption from taxes, duties or cess.**

Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,--

- (i) a Unit in a Special Economic Zone; or
- (ii) a Developer,

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

○ **Section 51 : Act to have overriding effect.**

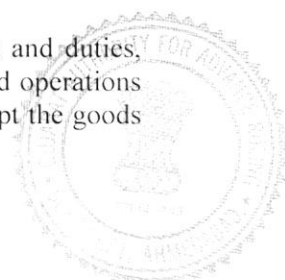
The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

➤ **Special Economic Zones Rules, 2006**

○ **Rule 5. Requirements for establishment of a Special Economic Zone. -**

(5) Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavor that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely: -

- (a) exemption from the State and local taxes, [State Goods and Services Tax,] levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;



○ **30. Procedure for procurements from the Domestic Tariff Area.-**

[(1) The Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.]

10. The applicant's case is that in respect of legal services from advocate, a recipient of service is required to pay GST under RCM in terms of notification No. 10/2017-IT (Rate) [incorrectly mentioned as notification No. 13/2017-CT (R)], reproduced *supra*. However, the applicant further states that being an SEZ unit, Rule 5(5)(a) of the SEZ Rules, 2006, provides exemption from SGST; that Rule 30(1), *ibid*, enables a DTA supplier to clear services to an SEZ unit as in the case of zero rated supply in terms of section 16 of IGST Act, 2017, either under bond or under legal undertaking or under any other refund procedure permitted under the GST law; that notification No. 18/2017-IT (Rate) exempts service imported by unit in SEZ for authorized operation from the whole of IGST leviable u/s 5, *ibid*; that even otherwise, section 51 of the SEZ Act, 2005, which is a non obstante clause, clearly states that the provisions of the SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In view of the foregoing, the applicant's averment that a combined reading clearly shows that the 'reverse charge' notifications cannot have any application in this case.

11. The applicant has also raised an alternative plea that even assuming that RCM notification, is applicable then also they could exercise the option of supply of services under LUT etc. without payment of IGST as provided in respect of supplies made from DTA to an SEZ unit specifically u/s 16(3) of the IGST Act, 2017.

12. We find that the FAQs on GST, 3rd edition, dated 15.12.2018, on the question of payment of IGST under RCM, when received by an SEZ unit has clarified as under:



Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?

Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case.

13. However, we also find that under notification No. 37/2017-CT, a unit in DTA can supply services to a unit in SEZ without payment of IGST subject to furnishing of LUT to the jurisdictional Commissioner. The relevant extracts of the notification are reproduced below for ease of understanding viz [relevant extracts]

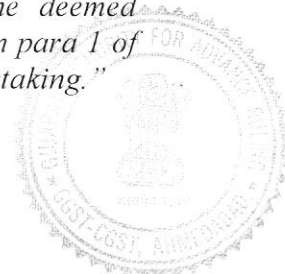
Notification No. 37/2017 –Central Tax dated 4.10.2017

G.S.R....(E).-In exercise of the powers conferred by section 54 of the Central Goods and Services Tax Act, 2017, and section 20 of the Integrated Goods and Services Tax Act, 2017, sub-rule (5) of rule 96A of the Central Goods and Services Tax Rules, 2017, and in supersession of notification No. 16/2017-Central Tax, dated the 7th July, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 848(E), dated the 7th July, 2017 except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby specifies conditions and safeguards for furnishing a Letter of Undertaking in place of a Bond by a registered person who intends to supply goods or services for export without payment of integrated tax –

(i) all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

On a similar issue, wherein clarification was sought, as to whether the SEZ unit is liable to pay GST in respect of legal services, sponsorship services etc received by an SEZ unit in IFSC, Gandhinagar, from a unit in DTA, which are chargeable to GST under RCM, Tax Research Unit, CBIC, New Delhi, clarified as under:

“3. Since the intention of the Legislature is not to tax supplies to a unit in SEZ or a SEZ Developer which have been zero rated under clause (b) of section 16(1) of the IGST Act, by virtue of deeming provision under section 5(3) of the IGST Act, 2017, levy for procurement of input services specified under notification No. 13/2017-CT (Rate) falls upon the unit in SEZ or the SEZ developer. It is, therefore clarified that a unit in SEZ or the SEZ developer can procure such services, where they are required to pay GST under reverse charge, without payment of integrated tax provided the actual recipient, i.e. unit in SEZ or SEZ developer, furnishes a Letter of Undertaking in place of a bond as specified in condition no. (i) in para 1 of notification No. 37/2017-CT. The actual recipient of service is the deemed supplier/registered person for the purpose of fulfilling other conditions in para 1 of the notification ibid including the manner of furnishing of Letter of Undertaking.”



14. There is no denying the fact that the aforementioned clarification was given to a specific SEZ unit and is not a circular. However, we find that there is no bar in borrowing the rationale of the aforementioned clarification. Hence, we find that the applicant, an SEZ unit, can procure the services mentioned *supra*, for use in authorized operations without payment of IGST provided the applicant, furnishes a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT.


15. Our above view stands substantiated vide the order no. MAH/AAAR/DS-RM/15/2022-23 dated 13.1.2023 of the Maharashtra Appellate Authority for Advance Ruling in the case of M/s. Portescap India P Ltd.

16. In view of the foregoing, we rule as under:

RULING

1. The applicant, an SEZ unit, is not required to pay GST under RCM on specified services in accordance with notification No. 10/2017-IT(Rate) dated 28.6.2017 as amended from time to time, subject to furnishing a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT.
2. In view of the answer to question (1) above, the second question is rendered infructuous.


(MILIND KAVATKAR)
MEMBER (SGST)


(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 16.04.2024

