



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No.07/AP/GST/2020 dated:25.02.2020

1	Name and address of the applicant	M/s. Halliburton Offshore Services Inc. (Drill Bits) Plot No. 5A3, Unit – 2, ADB Road, Vakalpudi, East Godavari District, Andhra Pradesh – 533004
2	GSTIN	37AAACH5154M1ZC
3	Date of filing of Form GST ARA-01	08.11.2019
4	Date of Personal Hearing	19.12.2019
5	Represented by	Sri Shyam Sundar Bangaru
6	Jurisdictional Authority –Centre	Superintendent, Ramanayyapeta Range, Kakinada CGST Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by Halliburton Offshore Services Inc. (hereinafter referred to as applicant), registered under the Goods & Service Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

Halliburton Offshore Services Inc. (herein after referred to as 'HOSI') is a global service provider, engaged in providing various oilfield services to Exploration and Production companies across the globe.

Presently, the Applicant has contracted to provide drill bits for drilling to ONGC at 12 different locations.

The applicant had filed an application in form GST ARA-01, 08.11.2019, by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below.

4. Question raised before the Authority:

The applicant filed the present application seeking a ruling from this Authority on the following issues:

- a. Whether the import of drill bits for supply to ONGC at its location in India on consumption basis involves two supplies namely,
 - Import into India of drill bits; and
 - Indigenous movement from the port of import to ONGC's location.
- b. If two supplies are involved in the abovementioned transaction then whether two Essentiality Certificates ('EC') are required to be issued i.e.
 - one for import of drill bits into India under serial no. 404 of Notification No. 50/2017-Customs, dated 30 June 2017; and
 - another for indigenous movement under Notification No. 3/2017-Central Tax (Rate), dated 28 June 2017 respectively.
- c. If answer to (a) above is no then whether the supply of drill bits to ONGC in India will be covered by serial no. 404 of Notification No. 50/2017-Customs dated 30 June 2017 (i.e. under single EC) and no two separate ECs are required.



On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdictional Officer, i.e. Superintendent, Ramanayyapeta Range Kakinada CGST Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State Tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from both Central and State jurisdictional officers concerned stating that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Record of Personal Hearing:

Sri Shyam Sundar Bangaru, the authorized representative appeared for Personal Hearing on 19.12.2019 and they reiterated the submission already made in the application.

6. Applicant's Interpretation of Law and Facts:

6.1 In the present case, the Applicant has entered into the Contract with ONGC to provide a wide range of oilfield services. Under the Contract, the Applicant is required to import drill bits from Halliburton Energy Services Inc. USA (HESI) and the Applicant acts as an importer on record. The invoice issued by HESI reflects the Applicant as Consignee and ONGC as the Ultimate Consignee.

6.2 As mentioned, the Applicant imports drill bits (classified under HSN 8207 1900) on payment of customs duty at the rate of 5% (i.e. BCD – 0% and IGST – 5%) in terms of Notification No. 50/2017 - Customs dated 30 June 2017 and subject to fulfillment of the applicable conditions. Post import, drill bits are supplied to the delivery location of ONGC on consignment basis, i.e., sale on approval basis. As per the terms of the Contract, the Applicant is responsible for transportation and insurance till such drill bits are delivered at ONGC's location. Once drill bits are delivered at the ONGC's location, such drill bits are stored in ONGC's storage space till the time the same is used / consumed / returned by ONGC.

6.3 In respect of the imported drill bits supplied by the Applicant to ONGC, the said drill bits are supplied on consignment basis i.e. sale on approval basis. The aforesaid position of sale on approval basis in the case of the Applicant is explained below:

6.3.1 Section 24 of the Sale of Goods Act, 1930 deals with "Goods sent on approval or 'on sale or return' " and reads as below:



“24. Goods sent on approval or “on sale or return”— When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.”

6.3.2 In view of the above provision, it is submitted that in case of a sale on approval basis, there is no sale until the buyer has either signified his approval (either expressly or by dealing with the goods as owner) or kept the goods until the lapse of prescribed time or reasonable time. In the instant case, the Applicant delivers the drill bits at ONGC's location and such drill bits are stored at ONGC's location after inspecting the same. Further, the invoicing and payment is done when the said goods are consumed which signifies that property in the goods has passed. When consumption is not done, payment can be released if the goods are retained by ONGC beyond the prescribed time in terms of Clause 11 of the contract.

6.3.3. In view of the foregoing, it is submitted that in the present case, the goods are supplied on “sale on approval” basis.

6.4.1 As the imported drill bits are supplied on sale on approval basis, the time limit for issuance of invoice is determined under Section 31(7) of the CGST Act.

Section 31 of CGST Act deals with issuance of tax invoice:

“(1) A registered person supplying taxable goods shall, before or at the time of:

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:



(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.” (emphasis supplied)

6.4.2 The time limit for issuance of invoice in case of supply of goods has been provided in sub-section (1) of Section 31. However, sub-section (7), deals with special case i.e. when the goods are being sent or taken on approval for sale or return, and begins with a non-obstante clause.

6.4.3 As per the settled position in law (Ref: **Brij Raj vs. S.K. Shaw [AIR 1951 SC 115]**), the expression ‘Notwithstanding anything contained in...’ prevents reliance on any other provision to the contrary. Courts have consistently held that when a clause begins with the word ‘Notwithstanding’, the object is to give it an overriding effect over other provisions of the Act which is equivalent to saying in spite of those provisions, the particular clause would have full operation. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. This means, in spite of any other provision of the Act or any other specific Act mentioned in the non-obstante clause or any contract or document mentioned, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment. [Ref: **Chandavarkar Sita Ratna Rao Vs Ashalata.S.Guram [1987 AIR 117 SC]**]

6.4.4 Accordingly, as Section 31(7) would clearly override the default provisions in relation to invoicing where there is a sale on approval or return, it would be pertinent to determine what constitutes ‘Goods sent on approval or on sale or return’ as that would be relevant to determine the time of supply of drill bits, and hence the point of time when liability to pay tax arises.

6.5 In view of the above, it is submitted that the applicant raises an invoice at the time of consumption of drill bits or on expiry of 6 months from the date of removal, whichever is earlier, in terms of Section 31 of CGST Act. Given the above background and analysis of the positions adopted by the Applicant, it is submitted that the Applicant is not only required to import drill bits for supply to ONGC but it is also required to undertake the transportation and insurance of drill bits till the time such drill bits are delivered to ONGC’s location.



6.6 Thus, considering the provisions of the GST statutes, the Customs Notification, Notifications issued under IGST / CGST Acts and EC dated 19 July 2016 issued to the Applicants, it is submitted that there are two events involved in the transaction of supply of drill bits to ONGC viz. import of goods into India by the Applicant and inter-state / intra state supply of drill bits by the Applicant to ONGC's location. The aforesaid has been elaborated in the ensuing paragraphs:

6.6.1 The charging provisions for intra-state supply and import / inter-state are different.

6.6.2 In terms of the charging provision under the CGST Act for intra-state supply, GST is levied on a 'supply' of goods and/or services:

"9. Levy and collection. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-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 and at such rates, not exceeding twenty per cent., 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."
(emphasis supplied)

6.6.3 Whereas, inter-State supplies, including imports, the charging provision is contained under Section 5 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), which reads as follows.

"5. Levy and collection. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on 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 per cent., 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 as 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."

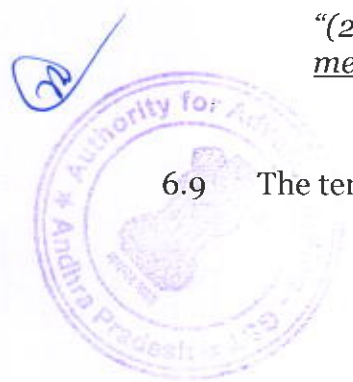
6.7 In terms of the foregoing, it is submitted that apart from the levy of GST on intra-State and inter-State supplies of goods within India, in relation to imports of goods into India, the taxing event is that of "import", and the IGST thereon is levied and collected in terms of the Customs Tariff Act, 1975.

6.8 Section 2(23) of the Customs Act, 1962 ('Customs Act') defines "import" as:

"(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;"

This definition is also reflected at Section 2(10) of the IGST Act.

6.9 The term "India" has been defined in Section 2(27) of Customs Act as:



“(27) “India” includes the territorial waters of India;”

Thus, as per Section (27) of the Customs Act, India would include the territorial waters of India for the purpose of the Customs Act.

6.10 In view of the above definition, it is submitted that the term “import” signifies etymologically “to bring in”. To import goods into India, i.e. the territory of India, therefore means to bring into the territory of India goods from outside “India”. Thus, the above definitions make it clear that no sooner the goods are brought into the territorial waters of India from outside India (i.e. from outside of territorial waters of India), import is said to have taken place.

6.11 In the case of **J.V. Gokal Vs. Assistant Collector of Sales Tax (Inspection) [1999 (110) ELT 196 (SC)]**, the Hon’ble Court held that *“the course of import, therefore, starts from one point and ends at another. It starts when the goods cross the customs barrier in foreign country and ends when they cross the customs barrier in the importing country.”*

6.12 The question as to when an import is said to be completed has been answered by the Apex Court in the case of **Garden Silk Mills Vs. Union of India [1999 (113) ELT 358 (SC)]**. In Para 16, the Hon’ble Court held that:

“16. It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.” (emphasis supplied)

6.13 In the context of sale in the course of import, the Hon’ble AP HC in the case of **Minerals & Metal Trading Corporation Vs. State of Andhra Pradesh [1999 (106) ELT 23 (AP)]**, held that:

“Therefore, irrespective of the fact whether duty is paid or not, when once the bill of entry is filed and the imported duty is assessed, then only the goods can cross the limits of the customs port, therefore, any transfer of documents of title before the clearance of the goods by the customs authorities on making the assessment of goods would amount to a sale in the course of import, as after the assessment is made and on filing of the bill of entry the goods get mingled with the general mass of goods and merchandize of the country. The goods get the eligibility to be declared as local goods.” (emphasis supplied)

6.14 From analysis of the aforesaid definitions and judicial precedents under Customs law and Sales Tax law, the following points emerge:



- a. 'Import', as defined under the Customs Act, means bringing goods into India i.e. into the territorial waters of India;
- b. The import is completed when the goods become part of the mass of goods within the country. [Ref: **Garden Silk Mills (supra)**];
- c. Once the goods get mingled with the general mass of goods and merchandize of the country, they lose the character of imported goods and are eligible to be declared as local goods. [Ref: **Minerals & Metal Trading Corporation (supra)**].

6.15 In view of the above, it is submitted that any transaction in relation to the imported goods, which takes place after the goods become part of the general mass of goods within India, is an independent transaction, and is liable to be separately taxed to GST. Thus, there are two supplies involved in the transaction of import of drill bits for supply to ONGC's location on consumption basis.

7.0 In light of the above, it is submitted that the Customs Notification and EC dated 19 July 2016 is qua the importer and imported goods only. Even the subject of the EC reads as 'Essentiality Certificate for import of goods...'. Further, the EC dated 19 July 2016 is addressed to the Deputy Commissioner of Customs only.

7.1 For availing benefit under domestic notification, it is necessary that the EC must be addressed to the Deputy Commissioner / Assistant Commissioner of Central Tax or Deputy Commissioner / Assistant Commissioner of State Tax, having jurisdiction over the supplier of goods. Under the Customs Notification, the EC must be produced by the importer of goods (i.e. the Applicant). Under the domestic notifications, the EC must be produced by the recipient of goods (i.e. ONGC). Accordingly, the separate transaction of indigenous movement of drill bits from the port of import to ONGC's location would not be eligible for the concessional rate of duty provided under serial no. 404 of Notification no. 50/2017 - Customs dated 30 June 2017.

7.2 Thus, for availing the benefit under domestic notification, it is necessary that the EC must be addressed to the Deputy Commissioner / Assistant Commissioner of Central Tax or Deputy Commissioner / Assistant Commissioner of State Tax, having jurisdiction over the supplier of goods. Accordingly, it is submitted that the Applicant would be eligible to charge GST on the separate transaction of indigenous movement of drill bits from the port of import to ONGC's location at the concessional rate of tax provided under Notification no. 3/2017-Central Tax (Rate) dated 28 June 2017.

8.0 Discussion and Findings:

8.1 We have examined the issues raised in the application. The taxability and the applicable rate of tax for the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

8.2 In view of the submission made by the applicant we find that the basic issue before us is whether the import of drill bits for supply to ONGC at its location in India on consumption basis involves two supplies namely, Import into India of drill bits; and



Indigenous movement from the port of import to ONGC's location; and If two supplies are involved in the abovementioned transaction then whether two Essentiality Certificates ('EC') are required to be issued for availing benefits with respect to concessional duties of IGST and CGST.

8.3 It is a self-asserted and admitted fact on record that the Applicant, under a contractual obligation, is required to import drill bits by themselves as an importer and undertake to supply drill bits to the delivery location of ONGC on consignment basis i.e. sale on approval basis. For the following reasons and the legal proposition, activity of import and subsequent supply of drill bits by the Applicant to ONGC does not qualify as one single supply.

8.4 In terms of Section -7(2) of the Integrated Goods and Services Tax Act, 2017, the 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*. As per Section 2(4) of the Integrated Goods and Services Tax (IGST) Act, 2017, read with Section 2(11) of the Customs Act, 1962, "**customs frontiers of India**" means the limits of a **customs** area viz. *the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities*. Till clearance by the Customs Authorities i.e. issuance of Out of Charge, the supply of goods imported shall be treated to be 'Inter-state supplies' and in terms of proviso to Section 5 of the IGST Act, 2017, the integrated tax on goods imported shall be levied and collected in accordance with the provisions of Section-3 of the Customs Tariff Act, 1975. The levy and collection of Customs duties including the concessions/exemptions etc are as per the Customs Law, the Customs Tariff Act and the Notifications issued there under. It is a settled legal proposition that once the goods imported are cleared by the Customs authorities, all the provisions of the Customs Law (relates to imported goods) ceases to be applicable or extendable to such goods. It is therefore, clear that the activity of import of drill bits by the Applicant is a distinct activity of supply of goods in the course of inter-state trade or commerce.

8.5 The Applicant further undertakes to supply drill bits to the delivery location of ONGC on consignment basis i.e. sale on approval basis. In such supply or delivery of drill bits, the Applicant is responsible for transportation and insurance of drill bits till deliver at ONGC locations. This activity involves issuance of invoice and a consideration or payment – as per terms and conditions of the contract. The post import activity of the Applicant is therefore, clearly falls within the scope of inclusive portion of expression "supply" under Section-7(a) of the Central Goods and Services Act, 2017. Depending upon the nature of supply, such supply of drill bits done by the Applicant are taxable services and is leviable or chargeable to CGST or IGST under CGST Act, 2017 or IGST Act, 2017, as the case may be. Any exemption from the whole or part of the tax, either absolutely or subject to conditions as may be specified, is only through a Notification issued by the Government by virtue of power vested in Section 11 of the CGST Act, 2017 or Section-6 of the IGST Act, 2017, as the case may be.



8.6 In exercise of the powers conferred by sub-section(1) of Section-11 of the CGST Act, 2017, the Government had issued a Notification No. 3/2017-Central Tax (Rate) dated 28.06.2017 exempts the intra-state supply of goods (*the description of which was given at column(3) of the table read with the List appended thereto, and falling under the tariff-item, sub-heading, heading or chapter – as the case may be*) from so much of Central Tax as is in excess of the amount calculated at the rate specified in Column (4) of the table. The said notification had categorically and clearly spelt out that the said exemption is subject to the relevant conditions annexed to the notification, as specified in the corresponding entry incolumn (5) of the Table. It is evident that the exemption granted under Notification No. 3/2017-Central Tax (Rate) dated 28.06.2017 is a conditional one. It is a settled law that the benefits or exemption of a Notification (a conditional in nature) is available or eligible to the goods, only if the conditions specified therein are fulfilled or complied with.

8.7 In view of the above, we accordingly ruled that the entitlement or eligibility or applicability of exemption from central tax under Notification No. 03/2017-Central Tax (Rate), dated 28.06.2017 to the supply of goods (drill bits) to the delivery stations of ONGC is only upon fulfilment of conditions specified in the said Notification – including the one of:

“producing to the Deputy Commissioner of Central Tax or the Assistant Commissioner of Central Tax or the Deputy Commissioner of State Tax or the Assistant Commissioner of State Tax, as the case may be, (having jurisdiction over the supplier of goods, at the time of outward supply of goods), a certificate from a duly authorized officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect as specified therein the Notification”.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question a: Whether the import of drill bits for supply to ONGC at its location in India on consumption basis involves two supplies namely,

- Import into India of drill bits; and
- Indigenous movement from the port of import to ONGC's location.

Answer a: Affirmative



Question b: If two supplies are involved in the abovementioned transaction then whether two Essentiality Certificates ('EC') are required to be issued i.e.

- (i) one for import of drill bits into India under serial no. 404 of Notification No. 50/2017-Customs dated 30 June 2017; and
- (ii) another for indigenous movement under Notification No. 3/2017-Central Tax (Rate) dated 28 June 2017 respectively.

Answer b(i): In terms of serial no. 404 of Notification No. 50/2017-Customs dated 30 June 2017 ('Customs Notification'), a concessional rate of Customs duty (BCD – NIL and IGST – 5%) is prescribed for specified goods mentioned in List 33, required in connection with petroleum operations undertaken under petroleum exploration license or mining leases granted by the Government to ONGC and the benefit of concessional rate of Customs duty (i.e. BCD – NIL, IGST – 5%) is available subject to fulfilment of conditions listed in Sl. No. 48 of the Customs Notification including the producing to the jurisdictional Deputy commissioner of Customs or Assistant commissioner of Customs, a certificate from a duly authorized officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect as specified therein the Notification”.

Answer b (ii): The entitlement or eligibility or applicability of exemption from central tax under Notification No. 03/2017-Central Tax (Rate) dated 28.06.2017 to the supply of goods (drill bits) to the delivery stations of ONGC is only upon fulfilment of conditions specified in the said Notification – including the one of: “producing to the Deputy Commissioner of Central Tax or the Assistant Commissioner of Central Tax or the Deputy Commissioner of State Tax or the Assistant Commissioner of State Tax, as the case may be, (having jurisdiction over the supplier of goods, at the time of outward supply of goods), a certificate from a duly authorized officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect as specified therein the Notification”.

Question c: If answer to (a) above is no then whether the supply of drill bits to ONGC in India will be covered by serial No. 404 of Notification No. 50/2017-Customs, dated 30 June 2017 (i.e. under single EC) and no two separate ECs are required.



Answer c: Not applicable as it's already replied in Answer b.

**Sd/-D. RAMESH
(MEMBER)**

**Sd/-M.SREEKANTH
(MEMBER)**

//t.c.f.b.o//



Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

- 1) M/s. Halliburton Offshore Services Inc.(Drill Bits),
Plot No.5A3, Unit-2, ADB Road, Vakalpudi, East Godavari District,
Pin.No.533004 (Andhra Pradesh) **(By Registered Post)**
- 2) M/s. Halliburton Offshore Services Inc.(Drill Bits),
International Business Park, 17th Floor, Commerz II,
Oberoi Garden City, Off Western Express Highway, Goregaon (East),
Mumbai-400063 Maharashtra State **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Kakinada Circle, Kakinada Division.
(By Registered Post)
2. The Superintendent of Central Tax, Ramanayyapeta Range, Kakinada CGST
Division**(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax,
Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax &
Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035
(By Registered Post)

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

