

AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.207, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI -600 006.

RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE TNGST ACT, 2017.

Members present:

Sri. Balakrishna S, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit II Commissionerate, Chennai - 600 034.	Smt. A. Valli, M.Sc., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.
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Advance Ruling No. 26/ARA/2024 Dated: 05.12.2024

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein after referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.

GSTIN Number, if any / User id		33AAACH8417K1ZK
Legal Name of Applicant		Haworth India Private Limited
Registered Address / Address provided while obtaining user id		Survey No. 260/4, Kiloy Village, Sriperumbudur, Kancheepuram, Tamil Nadu – 602 105.
Details of Application		No.AAAR/06/2023 dated 20.12.2023 Form GST ARA – 01 Application Sl.No.41/2022/ARA dated 07.07.2022. (Remanded vide Order)
Concerned Officer Jurisdictional Officer		State: Sriperumbudur Assessment circle Center: Chennai-Outer Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Manufacturing and Trading
B	Description (in brief)	
Issue/s on which advance ruling required		1. Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term. 2. Admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required		1. Whether in the facts and circumstances the activities and transactions would fall under paragraph 8(a) or 8(b) of Schedule III of CGST Act and remain non-taxable? 2. Whether irrespective of the activities and transactions falling under paragraph 8(a) or 8(b) as aforesaid input tax credit would be available without any reversals since no prescription has been notified for purpose of Explanation (ii) below Section 17(3) of CGST Act?

The applicant M/s Haworth India Private Limited, having registered premises at Survey No. 260/4, Kiloy Village, Sriperumbudur, Kancheepuram, Tamil Nadu – 602105 (hereinafter referred to as the applicant) is registered under the GST Act 2017 with GSTIN 33AAACH8417K1ZK. The Applicant has sought Advance Ruling on the following questions:

1. In the facts and circumstances of the case, whether the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018?

2. Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?

2.1. The Applicant has submitted the following in their Statement of relevant facts having a bearing on the question(s) raised:

The Applicant is a wholly owned subsidiary of Haworth, Inc. United States and is engaged in manufacture and sale of office furniture under the brand name 'Haworth'. The Applicant procures raw materials indigenously as well as from international market (from group entities). The Applicant imports certain finished goods from its group entities. Haworth is a worldwide global leader in design and manufacture of organic workspaces, including raised floors, movable wells, systems furniture, seating, storage and lighting.

2.2. In India, the Applicant has manufacturing facility and sales office in the state of Tamil Nadu. Further, the applicant has sales office in Karnataka, Maharashtra, Haryana and Telangana. All operations of the Applicant are located in Domestic Tariff Area (DTA). The outward supplies effected by the Applicant in India includes:

- a. Sale of goods manufactured at the manufacturing facility; and
- b. Sale of goods imported from group entities.

2.3. The Applicant is contemplating to operate the import and re-sale transaction from a Free Trade Warehousing Zone (hereinafter referred to as 'FTWZ') for operational convenience involving less documentation and swift clearance process so as to expedite project execution.

2.4. The Applicant submits that FTWZ is a Special Economic Zone wherein trading, warehousing and other activities related thereto are carried out. An FTWZ is a deemed foreign territory within the geography of India for the purpose of trade. An FTWZ, also called foreign-trade zone, formerly free port is an area within a country in which goods may be landed, handled, manufactured or reconfigured, and re-exported without the intervention of the customs authorities. Only when the goods are moved to consumers within the country in which the zone is located do they become subject to the prevailing customs duties. The FTWZ law allows multiple transfers of ownership transactions without removal of the goods out of FTWZ, thus ensuring the trading chain to be as close as possible and as may be required, ensuring that there is no cascade of indirect taxes / compliance and avoids increase in transaction cost.

2.5. The Applicant has submitted the flow of Transaction in FTWZ for Proposed Transaction as detailed below:

- The Applicant secures space in the FTWZ for a fee to store the imported goods from a unit holder. The Applicant executes required lease agreement with the FTWZ unit holder and deposits the goods from the port by filing Bill of Entry (BOE). FTWZ, owned and operated by independent third party merely clears and warehouses the goods imported. The FTWZ shall collect warehousing charges from the Applicant.

- On receipt of purchase order from the customer, the Applicant places an order with the overseas supplier for required goods. Once the goods are shipped, the Applicant intimates the FTWZ unit holder and provides copy of the purchase order and other documents for clearance of goods from the port and storage of the same in FTWZ. The FTWZ unit clears the goods from the port by filing Bill of Entry on behalf of the Applicant and stores the same in the warehouse. The FTWZ unit hands over the import invoice and other necessary documents to the Applicant. The FTWZ unit does not pay any import duty on clearance from the port.
 - The Applicant transfers the title of goods to customer under the cover of an invoice. The customer shall either clear goods from the FTWZ or shall make further transfer of such goods to other customers. It is important to note that every transfer of title of goods does not result in physical delivery of goods. The goods shall continue to remain in FTWZ unit holder till the final customer files BOE and clears goods from FTWZ. The Applicant wishes to highlight that multiple transfers are made while goods are lying in FTWZ.
 - The final customer, produces transfer of title document and files BOE for re-warehousing (SEZ) / home consumption (others) and clears the goods from the FTWZ. At this juncture goods are removed from the warehouse and is taken to the premises of the Customer.
3. The applicant has made the following factual and legal submissions in relation to the questions for which advance ruling is sought:

Question No.1

"In the facts and circumstances of the case, whether the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018?"

3.1. The Applicant submits that, the Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018 envisages transactions or activities which shall be treated neither as supply of goods nor as supply of services under GST. The Entry no. 8(a) of the schedule, covers supply of warehoused goods to any person before clearance for home consumption. Further, explanation to the entry provides that, 'warehoused goods' shall have the same meaning as assigned to it in the Customs Act, 1962.

3.2. The Applicant submits that FTWZ is a special category of Special Economic Zone as per Section 2(Za) of the SEZ Act, 2005, wherein mainly trading and warehousing and other activities related thereto are carried on. Both Customs bonded warehouse and FTWZ are required to execute bond with the Customs in order to import and store the goods in warehouse without payment of any duty. It is pertinent to note that although the provisions of bonding by a bonded warehouse and bonding by an SEZ/ FTWZ is governed by different laws with differing obligations, the rationale of bonding imported goods remains the same i.e. to avail duty benefit under the Customs Act, 1962. Thus every SEZ becomes a bonded premises under the Customs Act, 1962 by virtue of the deeming fiction created by Section 53(2) of SEZ Act and Rules mentioned above, thereby it can be construed that FTWZ is in parity with bonded warehouse under Customs Act, 1962. Therefore,

that since FTWZ is equivalent to bonded warehouse, transfers within FTWZ before clearance shall fall under Schedule III of the CGST Act, 2017, thereby not attracting levy under GST.

Question No.2

“Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?”

3.3. The Circular clarifies the applicability of IGST on goods supplied while being deposited in customs bonded warehouse effective from 07.04.2018 and states that Integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. This circular was made applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse on or after 01.04.2018.

3.4. Further, in terms of valuation the applicant stated that Section 3(8A) of Customs Tariff Act, levy of IGST on sale of goods deposited in warehouse but before clearance for home consumption, the valuation is higher of transaction value or sale value to buyer. The said provision infers that in case of goods deposited in a warehouse, only the person who is ultimately clearing the goods for home consumption is subject to tax and the transferor is not subject to tax on such transfer of warehoused goods.

3.5. The Applicant submits that in case of FTWZ/ bonded warehouse the FTWZ files 'in-to bond' BOE without payment of duty for warehousing and point of taxation under customs is deferred to time of clearance from FTWZ. Hence, under the customs provision, the transaction is subjected to levy when goods are cleared from the FTWZ. Therefore, as clarified in the Circular No.3/1/2018-IGST dated 25.05.2018, taxing the transaction before clearance does not arise for supply of warehoused goods, while being deposited in a FTWZ/ customs bonded warehouse. The Applicant is of the considered view that Circular No. 3/1/2018 – Integrated Tax (IGST) dated 25.05.2018 is applicable for the present transaction of transfer of title of warehoused goods and is of the view that supply of goods by the Applicant to customers subsequent transfers when the goods are still lying in the custom bonded warehouse or the FTWZ is outside the purview of GST as per Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018 and is not chargeable to tax under GST provisions till the goods are cleared for home consumption.

3.6. The Applicant has also placed reliance on the advance ruling pronounced by Tamil Nadu Advance Ruling Authority in the case of:

a. The Bank of Nova Scotia – Order No. 23/ AAR/ 2018 dated 31.12.2018

b. Sadesa Commercial Offshore De Macau Limited – Order No. 24/ AAR/ 2018 dated 31.12.2018.

4.1. The Central Jurisdiction Officer, the Joint Commissioner, Chennai Outer Commissionerate has offered the following remarks on the questions raised by the applicant:

4.1.1. From the application and circumstances narrated therein, it appears that the transaction of supply takes place within FTWZ (Free Trade Warehouse Zone). According to the Schedule III of CGST Act Sl.No.8(b), the transaction/activity of supply of goods by the consignee to any other person by the endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance of home consumption is neither a supply of goods nor a supply of service. According to Explanation II to Schedule III of CGST Act 2017, the expression “warehoused goods” in the schedule shall have the same meaning as assigned to it in the Customs Act 1962. According to Section 2 (43) of Customs Act 1962 “Warehouse” means a public ware house licensed under section 57 or a private ware house licensed under section 58 or a special warehouse licensed under section 58(A). According to section 2(44) “warehoused goods” means goods deposited in a warehouse;

4.1.2. Even though the day-to-day activities like warehousing and clearing of goods for home consumption on payment of applicable customs duties are supervised /monitored by Customs officials posted in the FTWZ in accordance with SEZ Act 2005, read with Customs Act, 1962, the approval/license/administrative control for FTWZ are fully governed under the provisions of SEZ Act 2005. Therefore, FTWZ is not a warehouse licensed under Customs Act 1962. Hence it was stated therein that the transactions narrated in the application are not covered under Schedule III of the CGST Act 2017.

4.1.3. As far as the Question No.2 was concerned, Circular No.3/1/2018 dated 25.05.2018 has been issued for clarifying the scope of supply with regard to transactions in Customs bonded warehouses and hence the same is not applicable to FTWZ which is not a warehouse as defined under the Customs Act, 1962.

4.1.4. He further stated that no proceedings in respect of the questions raised by the applicant is pending against the applicant in his jurisdiction.

4.2. The State jurisdiction officer, the Assistant Commissioner (ST), Sriperumbudur circle, has not offered any comments. However, the Joint Commissioner (ST), Intelligence- II, Chennai informed that no proceeding is pending in respect of the applicant.

5.1 The Applicant was offered a personal hearing on 15.03.2023 through virtual mode, and their authorized representative Ms. R. Sukanya, Chartered Accountant, who attended the hearing, reiterated the submissions already made.

5.2 Based on the submissions made, the Authority for Advance Ruling, Tamilnadu (AAR) vide Advance Ruling No.23/ARA/2023 dated 20.06.2023 ruled that under the facts and circumstances of the case, the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ will not be covered under Schedule III of the CGST Act, 2017 read with the CGST Amendment Act, 2018, and that in respect of the second query, Circular No.03/01/2018 – IGST dated 25.05.2018 has been rescinded vide Circular No.04/01/2019 – IGST dated 01.02.2019, in view of the amendment made in Schedule III of the CGST and TNGST Acts, 2017, by inserting paragraph No.8(a).

5.3 Aggrieved over the ruling pronounced in respect of query No.1, the applicant filed an appeal before the Appellate Authority for Advance Ruling, Tamilnadu (AAAR), which vide Order-in-Appeal No. AAAR/06/2023 (AR) dated 20.12.2023 set aside the ruling dated 20.06.2023 of the AAR and remanded the matter to the lower authority (AAR) for consideration and passing of appropriate orders, after following the principles of natural justice.

PERSONAL HEARING

6.1 Accordingly, the instant case has now been taken up for decision afresh by providing another opportunity of personal hearing to the applicant on 21.08.2024, and Shri. S. Thirumalai, Advocate who is the authorized representative (AR) of M/s.Haworth India Private Limited, appeared for the personal hearing which was held in virtual mode. The AR reiterated the submissions made in their original application and in the additional submissions dated 11.12.2023 submitted before the Appellate Authority for Advance Ruling who had remanded the matter back through their Order No.AAAR/06/2023 dated 20.12.2023. The AR reiterated the contents of the said submissions and requested the authorities to take the same on record. The AR further explained that apart from entry 8(a) of Schedule III of the CGST Act, 2017, entry 8(b) also merits consideration in the instant case. He also highlighted the fact that on similar issues in the case of M/s. Panasonic Life Solutions India Private Limited and M/s. Sunwoda Electronic India Private Limited., the same Authority for Advance Ruling, Tamilnadu (AAR), has pronounced a different ruling, the analogy of which may be considered for the instant case as well. He however stated that the ruling pronounced in so far as it relates to the query on proportionate reversal of ITC in the case of M/s. Panasonic Life Solutions India Private Limited is not proper as the recent amendments to Rules 42 and 43 of the CGST Rules, 2017, suggest that the same is applicable only to the supply of goods from Duty Free Shops in international airports.

6.2 It is seen that in the additional submissions dated 11.12.2023 made before the Appellate Authority for Advance Ruling (AAAR), the applicant had stated that the principal question in this case is whether the expression “warehoused goods” employed in Schedule III of the CGST Act in Entry 8(a) would cover warehousing under the SEZ Act, 2005 and the SEZ Rules, 2006 in the case of a unit in a FTWZ. In support of their claim that it would cover, they submitted that -

- That there is no inconsistency between the provisions of the Customs Act, 1962 and the SEZ Act, 2005 and the SEZ Rules, 2006 with respect to warehousing.
- SEZ Act, 2005 defines FTWZ as follows:
 - 2(n) **"Free Trade and Warehousing Zone"** means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on.
- Since "warehousing" in the above definition is not defined in the SEZ Act, 2005 reference is required to be made to Sec 2(zd) which reads as follows:
 - 2(zd) - **all other words and expressions** used and not defined in this Act but defined in the Central Excise Act, 1944, the Industries (Development and Regulation) Act, 1951, the Income-tax Act, 1961, the Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 shall have the meanings respectively assigned to them in those Acts.
- Sec 2(zd) of the SEZ Act, 2005 by way of referential legislation has adopted the meaning of "warehousing" from the Customs Act, 1962 for purpose of the said Act.
- Sec 2(44) of the Customs Act, 1962 defines "warehoused goods" as follows:
 - 2(44) "warehoused goods" means goods deposited in a warehouse
- Provisions of the SEZ Act, 2005 read with relevant SEZ Rules, 2006 provides as under
 - a) Sec 7 provides for exemption from duties, taxes and cesses;
 - b) Sec 26 provides for exemptions from Customs Duties to FTWZ;
 - c) Sec 51 has an overriding effect that notwithstanding anything inconsistent therewith contained in any other law for the time being in force ;
 - d) Rule 27(10) of the SEZ Rules provides that: The Assessment of imports and domestic procurement by a Developer or a Unit, shall be on the basis of self-declaration.
 - e) Rule 75 of the SEZ Rules says that the goods in the FTWZ shall be dealt with on the basis of self-declaration
- The AAR in Telangana in the matter of AIE Fibre (2021 (12) TMI 1265 – *Authority for Advance Ruling, Telangana*) has held that the goods warehoused in the FTWZ are warehoused goods for the purpose of the Customs Act, 1962 and would be covered by the relevant entry 8 in Sch III of the CGST Act.
- Intention of the legislature to consider FTWZ like a customs warehouse is also clear from the documentation and procedures i.e., Form-II (Bill of entry for warehousing) is the document filed by the importer for moving goods from the port to FTWZ unit which clearly establishes FTWZ are considered as Warehouses.
- Legislative History also points out the fact that there has been no question in the erstwhile tax regime or even in the present regime with regard to warehousing by FTWZ for purpose of Customs Act; Reliance in this regard is place on the order of Authority for Clarification and Advance Ruling of the **TN VAT Authority in the matter of Reddington India Ltd (ACAAR No. 27/2015-16 dated 22.06.2015)**.
- Chapter XA of the Customs Act, 1962 was omitted by the Finance Act, 2007 in view of the Special provisions made by separate SEZ legislation which had

adopted the definition of warehousing by way of legislation by reference as stated above.

- Provisions of the IGST Act and Sch III of the CGST Act (Entry 8(a) have to be construed harmoniously

3.1. Proviso to Sec 5(1) of the IGST Act states the integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (CTA)

3.2. Sec 7 (2) states that 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.

- It is therefore clear that until the goods in CBW or FTWZ unit is cleared on payment of Customs Duties under the CTA, 1975 the same are treated in the course of import and there could be no incidence of tax on any transfers while the goods lay stored in the warehouse.
- This accords with the reason for the treatment for “warehoused goods” under Sch III which is so as to avoid double taxation (a theme addressed in the GST Council Meetings recommending the above amendment to Sch III in 2019); This interpretation is also recognized by the Hon’ble CESTAT in a Customs matter where the interplay of Sec 5(2) of the IGST Act and Sec 3(7) of the CTA were examined in **Interglobe Aviation Ltd 2020 (11) TMI 151 - CESTAT NEW DELHI.**
- Therefore, it is to be held that the goods stored in the FTWZ under the SEZ Act, 2005 will be covered within the scope of Sch III of the CGST Act.

6.3 It is to be noted here that while remanding the matter back, the AAAR in para 6.10 of the Order dated 20.12.2023 had observed as follows :-

“6.10. Therefore, we are of the considered opinion that since the Authority for Advance Ruling had erred in not answering the question raised by the Applicant in its entirety and also not discussed all the contentions of the Applicant put forth in their original application. Hence, we hold that, justice will be met by remanding the case to the lower authority, with direction to consider the question raised by the Applicant in its entirety, to give findings on the other points raised by the Applicant and to offer them another opportunity of personal hearing before deciding the case as per the provisions of law. The AAR should examine afresh whether the activities proposed to be undertaken by the Applicant are covered by entry 8(a), 8(b) or any other entry in Schedule III of CGST Act, 2017 or otherwise. All aspects of the matter are kept open for decision by the AAR. We further find that this authority is empowered vide Section 101(1) of the CGST/TNGST Acts, 2017 to pass such orders as deemed fit.”

6.4 Accordingly, in pursuance of the direction from the Learned AAAR, the applicant rephrased the queries as given below in the additional submissions made during the hearing in the instant case on 21.08.2024, as follows :-

- a. Whether in the facts and circumstances the activities and transactions would fall under paragraph 8(a) or 8(b) of Schedule III of CGST Act and remain non-taxable?

b. Whether irrespective of the activities and transactions falling under paragraph 8(a) or 8(b) as aforesaid input tax credit would be available without any reversals since no prescription has been notified for purpose of Explanation (ii) below Section 17(3) of CGST Act?

6.5 Further, apart from reproducing the averments already made, the applicant put forth the following points as well in the additional submissions made on 21.08.2024, for consideration, viz.,

QUESTION 1

Whether in the facts and circumstances the activities and transactions would fall under paragraph 8(a) or 8(b) of Schedule III of CGST Act and remain non-taxable?

6.5.1 The Applicant submits that FTWZ is a special category of Special Economic Zone as per Section 2(za) of the Special Economic Zones Act, 2005 ("SEZ Act"). As per Section 2(n) of the SEZ Act, FTWZ means a SEZ wherein mainly trading and warehousing and other activities related thereto are carried on. Since warehousing in the above definition is not defined in the SEZ Act, reference is required to be made to Section 2(zd), which reads as follows:

"2(zd) - all other words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944, the Industries (Development and Regulation) Act, 1951, the Income-tax Act, 1961, the Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 shall have the meanings respectively assigned to them in those Acts."

6.5.2 Thus, there is no inconsistency between the provisions of the Customs Act, the SEZ Act and the SEZ Rules with respect to warehousing. The Applicant further submits that as per Rule 22 of the SEZ Rules r/w Section 53(2) of the SEZ Act "every SEZ is required to execute Bond-cum-Letter of Undertaking ("BLUT") in order to avail exemptions, duty drawback and concessions under customs." The FTWZ would be required to execute a bond in Form H of the SEZ Act with the customs authorities to avail the benefit of duty-free clearance. However, the duty benefits can be provided only by the Customs Act. Hence, the BLUT executed by any SEZ is presented before the customs authority and thus every SEZ becomes a bonded premises under the Customs Act by virtue of the deeming fiction created by Section 53(2) of SEZ Act and Rules mentioned above. The Applicant further submits that FTWZ as the name suggests is a bonded premises engaged in the facility of warehousing and hence qualifies to be a bonded warehouse under the provisions of Section 2(43) of the Customs Act. Thus, a FTWZ is in parity with bonded warehouse under the Customs Act.

6.5.3 Moreover, the Applicant submits that an analysis of legislative history also points out the fact that there has been no question in the erstwhile tax regime or even in the present regime regarding warehousing by FTWZ for purpose of Customs Act. Reliance in this regard is placed on the order in the matter of Reddington India

Ltd. [2015 (6) TMI 1265 – AUTHORITY FOR CLARIFICATION AND ADVANCE RULING] where the Authority has held that there would be no requirement to discharge VAT or CST on the transfer of title in the goods, so long as they remain in the warehouse.

6.5.4 The Applicant is of the view that transfer of title of goods by the Applicant to customers and subsequent transfers within the FTWZ would not result in supply and is not subjected to levy under Section 5(1) of the IGST Act or under the provisions of CGST Act or TNGST Act and the transfer of title of the warehoused goods is covered under Schedule III of the CGST Act r/w CGST Amendment Act, 2018 and thus, shall be treated as neither supply of goods nor services. The goods shall be taxable under the Customs Act in the hands of the final customer only on removal of the same from FTWZ as per amendment to Section 3 of the Customs Tariff Act, 1975.

6.5.5 The Applicant also draws reference to the following cases, wherein it has been held that transfer of title of goods within the FTWZ are squarely covered under Paragraph 8(a) of Schedule III of the CGST Act.

- a. M/s. AIE Fiber Resource and Trading (India) P.Ltd. [2021 (12) TMI 1265 – AUTHORITY FOR ADVANCE RULING, TELANGANA].
- b. Panasonic Life Solutions India Private Limited [2024 (8) TMI 695 – AUTHORITY FOR ADVANCE RULING, TAMIL NADU] (para 20).
- c. Sunwoda Electronic India Private Limited [2024 (6) TMI 11 – AUTHORITY FOR ADVANCE RULING, TAMIL NADU] (para 9.14).

Although the above Rulings have been rendered in relation to other assesseees, the decisions are on interpretation of the law and lay down a position of law. Therefore, they have persuasive value.

6.5.6 Alternatively the Applicant submits that the proposed transaction is squarely covered under Paragraph 8(b) of Schedule III of CGST Act. The Applicant submits that the Applicant secures space by executing a lease agreement in the FTWZ in exchange for a fee to store the imported goods. The FTWZ, owned and operated by independent third party, merely clears by filing BOE for warehousing the imported goods. The subsequent sale transactions are proposed to happen within the FTWZ by endorsement of documents of title to goods (as defined under Section 2(4) of the Sale of Goods Act) by the Applicant (the consignee). Subsequently, the ultimate customer who purchases the goods, will clear the goods for home consumption. The applicant states further that the above proposed transaction satisfies all the criteria under paragraph 8(b) of Schedule III of the CGST Act, which are:

- a. sale of goods by consignee to any other person;
- b. by endorsement of documents of title to the goods;
- c. after the goods have been dispatched from the port of origin located outside India;
- d. before clearance for home consumption.

6.5.7 Thus, the Applicant submits that the proposed transaction falls perfectly in line under Schedule III of the CGST Act and would be treated as neither supply of goods nor supply of services.

QUESTION 2

Whether irrespective of the activities and transactions falling under paragraph 8(a) or 8(b) as aforesaid input tax credit would be available without any reversals since no prescription has been notified for purpose of Explanation (ii) below Section 17(3) of CGST Act?

6.5.8 The Applicant submits that the Applicant is eligible to avail ITC on the proposed transaction. In terms of Section 17(2) of the CGST Act, “where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies”. Further, Section 2(47) of the CGST Act defines ‘exempt supply’ as ‘supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act and includes non-taxable supply.’ Section 2 (78) of the CGST Act defines ‘non-taxable supply’ as ‘supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act’.

6.5.9 In terms of amended Section 17(3) of the CGST Act with effect from 01.10.2023, “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except, inter-alia, the value of such activities or transactions as may be prescribed in respect of paragraph 8(a) of the said Schedule. However, the Applicant submits that when the instant transaction is not deemed to be a supply, it cannot be characterised as exempt supply for the purposes of ITC. Further, the Applicant submits that the legislative intent is clarified in the memorandum explaining the Finance Bill 2023, which is provided below:

“Explanation to sub-section (3) of section 17 of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III of the said Act, as may be prescribed, by including the value of such transactions in the value of exempt supply.”

6.5.10 Thus, the afore-mentioned amendment indicates that the ITC reversal for supply of warehoused goods is only in specific instances, which would be prescribed in the CGST/TNGST Rules, In this regard the Applicant highlights Explanation 3 of Rule 43 of the CGST Rules, in terms of which the value of activities or transactions mentioned in paragraph 8(a) of Schedule III of the CGST Act which is required to be included in the value of exempt supplies under clause (b) of the explanation to Section 17(3) of the CGST Act shall be the value of supply of goods from Duty Free Shops (DFS) at arrival terminal in international airports to the incoming passengers.

6.5.11 Therefore, on a combined reading of the explanation to Section 17 (3) of the CGST Act, read with Rules 42 and 43 of the CGST Rules, it appears that as per the said amendment ‘exempt supplies’, as prescribed in respect of paragraph 8 (a) of Schedule III, would only include supply of goods from DFS at arrival terminals. The above understanding also finds support from the agenda notes of 47th GST council meeting which also clarifies that the intention of the amendment is to disallow ITC

to DFS located at the arrival terminal and by doing so, consequently, to eliminate the question of allowing refund of ITC to DFS located at the arrival terminal, as referenced below:

"....In view of this, in order to deny benefit of refund of input tax credit in respect of supplies made from Arrival DFS, the input tax credit in respect of Arrival DFS may be required to be reversed under sub-section (2) of section 17, read with sub-section (3) of the said section, by including transactions under para 8 (a) of Schedule III in the value of exempt supply by substituting Explanation to sub-section (3) of section 17 of CGST Act, 2017 as proposed below:...."

Accordingly, the applicant stated that they would be entitled to avail input tax credit without any reversal on the proposed transaction.

DISCUSSION AND FINDINGS

7.1 We have carefully considered all the material available on record, the applicable statutory provisions, the 'Grounds of Appeal' furnished by the applicant, the submissions made during the personal hearing. It is seen that the questions raised in the application dated 07.07.2022 filed originally by applicant carried the following queries for clarification, viz.,

1. *In the facts and circumstances of the case, whether the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017 r/w CGST Amendment Act, 2018?*
2. *Whether the Integrated Tax (IGST) Circular No. 3/1/2018 dated 25.05.2018 is applicable to the present factual situation?*

However, in view of the fact that the Circular No. 03/01/2018-IGST dated 25.05.2018 was no longer in vogue, having been rescinded by Circular No. 05/01/2019-IGST dated 01.02.2019, and in view of the remand directions made by the AAAR in their Order dated 20.12.2023, i.e., *"The AAR should examine afresh whether the activities proposed to be undertaken by the Applicant are covered by entry 8(a), 8(b) or any other entry in Schedule III of CGST Act, 2017 or otherwise. All aspects of the matter are kept open for decision by the AAR."*, the applicant rephrased the queries for answer as follows :-

1. *Whether in the facts and circumstances the activities and transactions would fall under paragraph 8(a) or 8(b) of Schedule III of CGST Act and remain non-taxable?*
2. *Whether irrespective of the activities and transactions falling under paragraph 8(a) or 8(b) as aforesaid input tax credit would be available without any reversals since no prescription has been notified for purpose of Explanation (ii) below Section 17(3) of CGST Act?*

7.2 As regards the first query, The AAR in the original ruling dated 20.06.2023 had opined that as the warehouses in question were governed under the provisions of SEZ Act, 2005 and not licenced under the Customs Act, 1962, the transactions in

question will not be covered under paragraph 8(a) of the Schedule III of the CGST Act, 2017. Therefore the moot point for consideration is the whether the transfer of title of goods stored in FTWZ by the applicant to its customers in DTA or multiple transfers within the FTWZ, before the goods are actually cleared into DTA for home consumption, fall within the scope of 8(a) or 8(b) of the Schedule III of the CGST Act, 2017.

7.3 It is seen that the Applicant has submitted the flow of Transaction in FTWZ in the original application as detailed below :-

- The Applicant secures space in the FTWZ for a fee to store the imported goods from a unit holder. The Applicant executes required lease agreement with the FTWZ unit holder and deposits the goods from the port by filing Bill of Entry (BOE). FTWZ, owned and operated by independent third party merely clears and warehouses the goods imported. The FTWZ shall collect warehousing charges from the Applicant.
- On receipt of purchase order from the customer, the Applicant places an order with the overseas supplier for required goods. Once the goods are shipped, the Applicant intimates the FTWZ unit holder and provides copy of the purchase order and other documents for clearance of goods from the port and storage of the same in FTWZ. The FTWZ unit clears the goods from the port by filing Bill of Entry on behalf of the Applicant and stores the same in the warehouse. The FTWZ unit hands over the import invoice and other necessary documents to the Applicant. The FTWZ unit does not pay any import duty on clearance from the port.
- The Applicant transfers the title of goods to customer under the cover of an invoice. The customer shall either clear goods from the FTWZ or shall make further transfer of such goods to other customers. It is important to note that every transfer of title of goods does not result in physical delivery of goods. The goods shall continue to remain in FTWZ unit holder till the final customer files BOE and clears goods from FTWZ. The Applicant wishes to highlight that multiple transfers are made while goods are lying in FTWZ.
- The final customer, produces transfer of title document and files BOE for re-warehousing (SEZ) / home consumption (others) and clears the goods from the FTWZ. At this juncture goods are removed from the warehouse and is taken to the premises of the Customer.

7.4 For facilitation, the relevant provisions, viz., paragraph 8(a) and 8(b) of Schedule III of the CGST Act, 2017, are reproduced as under :-

8(a) Supply of warehoused goods to any person before clearance for home consumption;

8(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”;

*Explanation 2.—For the purposes of paragraph 8, the expression —**warehoused goods** shall have the same meaning as assigned to it in the **Customs Act, 1962.***

Accordingly, as per Section 2(44) of the Customs Act, 1962,

*“(44) **“warehoused goods”** means goods deposited in a warehouse”*

And, as per Section 2(43) *ibid*,

*“(43) **“warehouse”** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A.”*

7.5 Therefore, as per the definition of ‘warehouse’, as in the Customs Act, 1962, only a public warehouse licensed under section 57, or a private warehouse licensed under section 58, or a special warehouse licensed under section 58A, is seen to have been covered. In spite of the same, the applicant is of the opinion that there is no inconsistency between the provisions of the Customs Act, the SEZ Act and the SEZ Rules with respect to warehousing, in view of the provisions of Section 2(zd) of the SEZ Act, 2005, which states that all other words and expressions **used but not defined** in this Act, shall have the meanings respectively assigned to them in those Acts, and it reads as under :-

*“(zd) all other words and expressions **used and not defined** in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the **Customs Act**, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts.”*

7.6 Accordingly, the applicant opines that the transaction/activity in the instant case gets covered under paragraph 8(a) of Schedule III of the CGST Act, 2017. However, the applicant is of the opinion that alternatively, the said transaction also gets covered under paragraph 8(b) of Schedule III of the Act, *ibid*, as the provisions of the paragraph 8(b) also gets satisfied. It therefore becomes imperative to analyse and fix as to whether the said transaction gets covered under paragraph 8(a), or under paragraph 8(b) of Schedule III of the CGST Act, 2017.

7.7 To begin with, we intend to take up the provisions of paragraph 8(b) of Schedule III that reads as “8(b) Supply of goods by the consignee to any other person, **by endorsement of documents of title to the goods**, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.” It is to be noted here that the above provision specifically refers to the term ‘by **endorsement** of documents’ in absolute terms, and not just ‘transfer of title’ in general. We are therefore of the opinion that the term ‘by endorsement’ assumes significance in the context of the instant case.

7.8 In this regard, it is seen from the ‘Principles of Insurance and Banking’ authored by Dr. S.S. Kundu, the term ‘**Endorsement**’ and its properties has been discussed as below :-

“1.9 ENDORSEMENT

*The word ‘endorsement’ in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, **the writing of one’s name on the back of the instrument or any paper attached to it***

with the intention of transferring the rights therein. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser', and the person to whom negotiable instrument is transferred by endorsement is called the 'endorsee'.

Essentials of a valid endorsement

The following are the essentials of a valid endorsement:

1. It must be on the instrument. *The endorsement may be **on the back or face of the instrument** and if no space is left on the instrument, it may be made on a separate paper attached to it called allonage. It should usually be in ink.*
2. *It must be made by the maker or holder of the instrument. A stranger cannot endorse it.*
3. *It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.*
4. *It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But intention to transfer must be present.*

-----."

7.9 We notice further that the phrase, '**documents of title to goods**' also carries a specific meaning and as per Section 2(4) of the Sale of Goods Act, 1930, the term 'documents of title to goods' is defined as below :-

*"(4) "document of title to goods" includes a **bill of lading**, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, **either by endorsement or by delivery**, the possessor of the document to transfer or receive goods thereby represented;"*

7.10 On a conjoint reading of the phrases referred above, along with its properties and specifications, i.e., "by endorsement" and "documents of title to the goods", it becomes clear that the activity relating to "Supply of goods, by endorsement of documents of title to the goods" as enumerated under para 8(b) of Schedule III of the CGST Act, 2017 refers to the mode of transaction for a specific activity, as against the practice adopted for normal sale transactions. Further the second part of phrase forming part of paragraph 8(b), i.e., "after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.", points to a situation when the goods lie midway, or, are in transit. Ideally, when a 'High Sea Sale' takes place, 'Bill of lading' normally becomes the crucial document that could be subjected to endorsement. We are of the opinion that this is precisely the reason as to why paragraph 8(b) of Schedule III is conceptually linked to 'High Sea Sale'.

7.11 We further find that the applicant in para 2.5 of the application for advance ruling have stated as follows :- "The Applicant transfers the **title of goods** to

customer under the cover of an **invoice**.” The document in the instant case being an invoice, the same is to be treated as a proper document for sale, whereby a straightforward ‘transfer of title’ through an invoice happens between the applicant and the customer in respect of the transactions in question. Accordingly, it becomes clear that the transaction involved in the instant case is to be considered as a mere ‘transfer of title’, and it cannot be treated as a case of “*Supply of goods, **by endorsement of documents of title to the goods***”, by any means whatsoever. We are therefore of the opinion that the transaction in question, does not get covered under paragraph 8(b) of Schedule III of the CGST Act, 2017, as it is meant to cover a specific situation/activity in the nature of ‘High Sea Sale’.

7.12 Once the application of paragraph 8(b) of Schedule III of the CGST Act, 2017 to the instant case is effectively ruled out, it becomes imperative to examine as to whether the provisions of paragraph 8(a) of Schedule III of the CGST Act, 2017, viz., “Supply of **warehoused goods** to any person before clearance for home consumption”, applies to the instant case or not.

7.13 In this regard, we observe that as discussed already above, the definition of ‘warehouse’ as in the Customs Act, 1962, gets restricted to the Customs bonded warehouses under Sections 57, 58 and 58A of the Act, *ibid*. At this juncture, it becomes imperative to take note of the fact that while SEZ is considered as a duty free enclave in simple terms, and FTWZ is one category of SEZ that specializes in warehousing and trading operations. The definitions of SEZ and FTWZ under the SEZ Act, 2005 are reproduced for facilitation, viz.,

*“2(za) “**Special Economic Zone**” means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and **Warehousing Zone**) and includes an existing Special Economic Zone;”*

*“2(n) “**Free Trade and Warehousing Zone**” means a Special Economic Zone wherein mainly trading and **warehousing** and other activities related thereto are carried on;”*

7.14 Further, Sections 3 and 6 of the SEZ Act, 2005, contains the following provisions involving the term/activity of ‘warehousing’, viz.,

*“3. Procedure for making proposal to establish Special Economic Zone.—(1) A Special Economic Zone may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for both or as a Free Trade and **Warehousing Zone**.”*

“6. Processing and non-processing areas.—The areas falling within the Special Economic Zones may be demarcated by the Central Government or any authority specified by it as—

- (a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or*
- (b) the area exclusively for trading or **warehousing** purposes; or*
- (c) the non-processing areas for activities other than those specified under clause (a) or clause (b).”*

7.15 And, as far as the provisions of SEZ Rules, 2006, are concerned, the following provisions that involve the term 'warehouse', attract attention, viz.,

27. Import and Procurement. -

*(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Biotechnology Park unit, or **warehouse** all type of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items.*

*27 (7) The goods already imported or shipped or arrived before the issue of Letter of Approval shall be eligible for duty free clearance provided customs duty has not been paid and goods have not been cleared from Customs or cleared and placed in the **Bonded Warehouses**.*

*28 (4) The Unit or Developer may also procure goods required for the authorized operations, without payment of duty, from International Exhibitions held in India or from **bonded warehouses** set up under the Foreign Trade Policy and under the Customs Act in the Domestic Tariff Area;*

7.16 In its most fundamental sense, a bonded warehouse is one of the types of warehouses sanctioned by customs authorities, specifically designed to house imported goods without the immediate burden of import duties or taxes. This allows business enterprises to store their goods without paying duties until they are ready to be released into the domestic market. On the other hand, in non-bonded facilities, duties on the items imported and kept, are already paid for. Accordingly, the bonded warehouses and unbonded warehouses differ significantly in terms of tax status.

7.17 However, it is to be noted here that warehouses as discussed within the legal framework of SEZ/FTWZ, are nothing but 'bonded warehouses', very much akin to 'customs bonded warehouses'. Further, we observe that there is no inconstancy between the provisions of the Customs Act, the SEZ Act and the SEZ Rules with respect to warehousing. As per rule 22 of the SEZ Rules, every SEZ is required to execute Bond-cum-Legal Undertaking ("BLUT") in Form 'H' of the SEZ Act with the Customs authorities to avail the benefit of duty-free clearance. It is to be noted here that though the Form 'H' is prescribed under the provisions of SEZ Act and Rules, the 'BLUT' executed by any SEZ is presented before the Customs authorities as the duty benefits provided for, are related to the Customs Act. The fact that the BLUT form is accepted and signed by the Officer of Development Commissioner/Joint/Deputy Development Commissioner, and also by the Officer of Joint/Deputy/Assistant Commissioner of Customs, corroborates the fact that the procedural requirement under the SEZ Act and the Customs Act travel together

without any inconsistency. Further, the 4th para of the BLUT form and para 3 of the Conditions of BLUT form, reads respectively, as below :-

*"And whereas the obligors can clear duty free imported goods from ports or airports or inland container depots or specified land custom stations or **customs warehouse** or international exhibitions held in India, as the case may be, for admission into the Special Economic Zone"*

*"3. We, the obligors shall furnish to the Assistant Commissioner of **Customs** or Deputy Commissioner of **Customs**, as the case may be, at port or air-port or inland container depot or land customs stations or **a warehouse** evidence to his satisfaction within a period of forty-five days from the date of dispatch from **any warehouse** or unit that the said goods have duly arrived in our unit in the Special Economic Zone."*

It could be seen from the above that an intimation is required to be furnished to the Assistant/Deputy Commissioner of Customs, about the arrival of goods in SEZ, and that the 'BLUT' form refers to '**Customs warehouse**', '**a warehouse**' and '**any warehouse**', and thereby all types of warehouses stand referenced.

7.18 Further, we notice that the provisions of Rule 28(4) of the SEZ Rules, 2006, reads as,

*"28 (4) The Unit or Developer may also procure goods required for the authorized operations, without payment of duty, from International Exhibitions held in India or from **bonded warehouses** set up under the **Foreign Trade Policy** and under the **Customs Act** in the Domestic Tariff Area;"*

Whereby, it could be seen that the legal provisions, identify and accommodates both types of bonded warehouses, whether set up under the Foreign Trade Policy (warehouses under SEZ/FTWZ), or under the Customs Act (Customs bonded warehouses). Both the customs bonded warehouses and the warehouses under the duty-free zones are special warehousing regimes that offer logistics solutions tailored to international trade, each with their own advantages and benefits. While the customs warehouse stands out for its focus on secure warehousing and efficient inventory management, the warehouses in duty-free zones are notable for its commercial freedom and tax advantages. In effect, both the types of bonded warehouses offer financial respite to the business houses in the form of tax deferral.

7.19 It is to be noted here that while the terms 'warehouse' and 'warehoused goods' have been defined under Section 2(43) and 2(44) of the Customs Act, 1962, the same have not been defined under the SEZ Act, 2005. However, Section 2 of the SEZ Act, 2005, that contains the definition of certain words/expressions under the said Act, also carries a provision under Section 2(zd) of the SEZ Act, which states that all other words and expressions **used but not defined** in this Act, shall have the meanings respectively assigned to them in those Acts, and it reads as under :-

*"(zd) all other words and expressions **used and not defined** in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development*

*and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the **Customs Act**, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts."*

7.20 In this regard, it is to be highlighted here that it is quite normal that any definition provided under any Act would be naturally designed to serve its own purpose, and not with an intent to cater to any other Act or situation. We note that this is precisely the reason, the 'overriding' nature the SEZ Act, 2005 provides over any other law, through Section 51 of the Act, *ibid*, comes in to take care of any such inconsistencies, under any other law. For facilitation, the provisions of Section 51 is reproduced as under:-

"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."*

7.21 We observe that by way of Circular No.19/2016-Customs dated 20.05.2016, on the subject "Allotment of Warehouse Code for Customs Bonded Warehouses", the Central Board of Excise and Customs in para No.1 stated as follows :- *"Please refer to the changes made in the Finance Act, 2016 to shift towards record based control with respect to **Bonded Warehouses**. It is proposed that each warehouse be allotted a unique **warehouse code** so that importers can **declare the warehouse** in which goods shall be deposited, at the **into-bond bill of entry stage**."* It has also been explained in the Annexure to the said Circular about the generation of **eight digit Warehousing Code**, whereby the first 4 characters indicates the EDI port of registration, the fifth character to denote the type of warehouse and the sixth, seventh and eighth characters are running numeric serial numbers.

The User Manual on 'SEZ Web Forms' by ICEGATE 2.0 prescribes two types of Bill of Entry, viz., 1. **Z type BOE** :- SEZ BE (FTA-SEZ) and, 2. **T type BOE** :-SEZ (DTA Sales – Trading). The Manual further prescribes that 'General and **Warehouse details**' pertaining to the import is required to be provided in Segment-1 of the said web form.

This apart, the Directorate General of Systems and Data Management through para No.2 of the Advisory No.32/2023 dated 23.12.2023, has stated as follows :- *"In this regard, modifications have been made in the System, for mandatory declaration of **warehouse code** by the importer at the time of filing **into-bond bill of entry**. A check has also been placed in the System that at that time of clearance of **warehouse bill of entry**, the warehouse code mentioned should be active and valid."*

7.22 Accordingly, it could be seen that the allotment of eight digit warehouse code for Customs Bonded warehouses in effect extends to other bonded warehouses under SEZ/FTWZ as well, and the scheme of 'Integration of SEZ cargo delivery systems through SEZ online with Customs EDI System (ICES)' further proves the fact that the procedural requirement under the SEZ Act and the Customs Act are inextricably interwoven that they are bound to travel together without any

inconsistency. Normally, the 'into-bond bill of entry' is filed as 'Bill of Entry for Warehousing', irrespective of the fact whether the imported goods are brought to a 'Customs Bonded Warehouse, or to a FTWZ/SEZ warehouse. Even in the event of considering the definition of 'warehouse' as in the Customs Act, 1962, as an anomaly or inconsistency, the overriding effect that Section 51 provides to the SEZ Act, 2005, obviates the anomaly, if any.

7.23 Under these circumstances, we are of the opinion that a 'Free Trade Warehousing Zone', as the name suggests, is a bonded premises providing warehousing facility, much in parity with the bonded warehouse under the Customs Act. Further, when the goods are imported and brought into a FTWZ unit, they are basically warehoused first and then traded or subjected to other authorized operations as the case may be. We notice that the applicant's queries for advance ruling in the instant case is restricted to the first stage, i.e., when the imported goods are supplied to any person before they are cleared for home consumption, while they still remain warehoused. Accordingly, we are of the considered opinion that the provisions of 8(a) of Schedule III of the CGST Act, 2017, viz., "Supply of warehoused goods to any person before clearance for home consumption" applies to the instant case.

7.24 As far as Query No.2 of the applicant's application for advance ruling is concerned, we notice that the same reads as, "*Whether irrespective of the activities and transactions falling under paragraph 8(a) or 8(b) as aforesaid input tax credit would be available without any reversals since no prescription has been notified for purpose of Explanation (ii) below Section 17(3) of CGST Act?*". In this regard, we observe that the provisions of Section 17(2) and 17(3) that talks about apportionment of credit in such situations when a taxable person effects taxable supplies as well as exempted supplies, reads as below,

*"(2) Where the goods or services or both are used by the registered person partly for effecting **taxable** supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting **exempt** supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.*

*(3) The **value of exempt supply** under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."*

7.25 Prior to the amendment to Section 17 of the CGST Act, 2017, carried out under the Finance Act, 2023 (8 of 2023), the explanation to sub-section (3) of Section 17, read as follows :-

*"Explanation.— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, **except those specified in paragraph 5 of the said Schedule.**"*

Under Section 139 of the Finance Act, 2023 (8 of 2023), an amendment to Section 17 of the CGST Act, 2017 has been proposed as follows :-

"In section 17 of the Central Goods and Services Tax Act,—

*(a) in sub-section (3), in the Explanation, for the words and figure "**except those specified in paragraph 5 of the said Schedule**", the following shall be substituted, namely:—*

"except,—

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

*(ii) the value of such activities or transactions as may be prescribed in respect of **clause (a) of paragraph 8** of the said Schedule."*

The said amendment came into force from 1.10.2023 onwards by way of Notification No.28/2023-Central Tax dated 31.07.2023, whereby apart from paragraph 5 of Schedule III, the activities or transactions referred to in clause (a) of paragraph 8 were also to be treated as "exempt supplies" and not as "non-supplies". The moot point for consideration here is that once an activity/transaction is considered as an 'exempt supply', it attracts the proposition of apportionment of credit, as provided for under Section 17(2) of the CGST Act, 2017, whereby the credit on input tax that is attributable to exempt supplies is required to be reversed.

7.26 At this juncture, we notice that the phrase "**as may be prescribed**" in clause (ii) of the Explanation to sub-section (3) of Section 17, as above, carries significance, as it necessitates a recourse to the CGST Rules made thereunder. In this regard, we notice that parallel to the amendment to Section 17 of the CGST Act, 2017, an amendment (on the recommendations of the GST Council), has also been made to CGST Rules, 2017, by way of insertion of "Explanation 3" after sub-rule (5) to Rule 43 of the Rules, *ibid*, as provided under point No.7 of the Notification No.38/2023 – Central Tax dated 04.08.2023, that reads as below :-

"7. In the said rules, in rule 43, after sub-rule (5), –

(a) in Explanation 1, clause (c) shall be omitted;

(b) after Explanation 2, with effect from the 1st day of October, 2023, the following Explanation shall be inserted, namely: -

"Explanation 3:- For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers."

7.27 Further, perusal of the excerpts of para 7.59 of the 'Minutes of the 47th Meeting GST Council held on 28th & 29th June, 2022', confirms the position that the legal intent behind these amendments, is to include certain transactions (supplies from 'Duty Free Shops', specifically) under paragraph 8(a) of Schedule III of CGST Act in the value of exempt supply, for the purpose of reversal of appropriate ITC. For facilitation, the relevant portion of the same is reproduced as below :-

"ii. For future, there is a need to exclude refund in respect of ITC on inputs/ input services **pertaining to Duty Free Shops** at Arrival Terminal **by amending Explanation to sub-section (3) of section 17** of CGST Act **by including certain transactions under paragraph 8(a)** of Schedule III of CGST Act in the value of **exempt supply**. The Law Committee recommended;-

b. To amend sub-section (3) of Section 17 of CGST Act, 2017 by substituting the existing explanation with the explanation proposed in the Agenda.

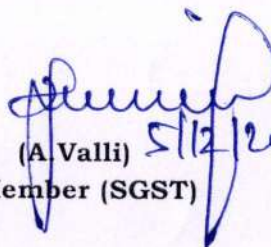
c. Post amendment in sub-section (3) of Section 17 of CGST Act, **the supplies from Duty Free Shops** at arrival terminal to the incoming passengers **to be prescribed through the Rules** so that value of **such supply are not excluded** for calculation of "**value of exempt supply**" for the reversal of ITC."

7.28 Under the facts and circumstances of the case, we are of the considered opinion that reversal of proportionate input tax credit of common inputs/input services/Capital goods is not warranted at the hands of the Applicant in terms of the amended Section 17(3) of the CGST Act, 2017 read with Explanation 3 of Rule 43 of the CGST Rules, 2017, even when the activity/transaction in question is covered under paragraph 8(a) of Schedule III of the CGST Act, 2017, as long as it does not relate to supplies from 'Duty Free Shops' at arrival terminal in international airports to the incoming passengers.

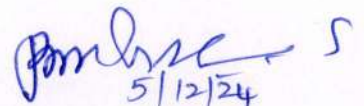
8. In view of the detailed discussion supra, we rule as under.

RULING

1. In the facts and circumstances of the case, the transfer of title of goods by the Applicant to its customers or multiple transfers within the FTWZ gets covered under paragraph 8(a) of Schedule III of the CGST Act, 2017, and remain non-taxable.
2. In the facts and circumstances of the case, the applicant is not required to reverse any ITC of common inputs/input services/Capital goods, even when the activity/transaction in question is covered under paragraph 8(a) of Schedule III of the CGST Act, 2017, as the value of exempt supplies in relation to transaction covered under paragraph 8(a) has already been prescribed, and it relates only to supplies from 'Duty Free Shops' at arrival terminal in international airports to the incoming passengers.


(A Valli)
Member (SGST)
5/12/2024




5/12/24
(Balakrishna S)
Member (CGST)

To

M/s Haworth India Private Limited,
Survey No. 260/4,
Kiloy Village Sriperumbudur,
Kancheepuram,
Tamil Nadu – 602105

//By RPAD//

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai 600 005.
3. The Principal Commissioner of GST and Central Excise,
Chennai Outer Commissionerate.

Copy to:-

1. The Assistant Commissioner (ST),
Sriperumbudur Assessment Circle,
Integrated Sales Tax Buildings,
Chennai-Bangalore High way,
Varadharajapuram, Nazrathpet,
Chennai 600 123.
2. Master File / Spare – 1.