

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Shri Manoj Kumar Choubey
Joint Commissioner

Office of the Joint Commissioner of Commercial Tax, Indore Division-I

2. Shri Virendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AAACK2342Q1ZI
Name and address of the applicant	M/S KHAITAN CHEMICALS AND FERTILISER VILLAGE NIMRANI A.B. ROAD DIST. KHARGONE MADHYA PRADESH 451660
Point on which advance ruling sought	(e) determination of the liability to pay tax on any goods or services or both;
Present on behalf of applicant	Shri Kapil Binakiya, CA
Case Number	09/2020
Order dated	08/12/2020
Order Number	18/2020

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. M/S KHAITAN CHEMICALS AND FERTILISER (hereinafter referred to as the Applicant) is an autonomous, not for profit, registered society under Department of Micro, Small and Medium Enterprises, Government of Madhya Pradesh. The Applicant is having a GST registration with GSTIN 23AAACK2342Q1ZI.
2. The provisions of the CGST Act and MPGST 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 MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE –

3.1. Khaitan Chemical and Fertiliser (hereinafter referred to as “the Applicant”) is engaged in the manufacturing of Single Super Phosphate (Fertilizer), Sulphuric Acid (Chemical). For the manufacture of Single Super Phosphate (SSP), the major raw material required is Rock Phosphate which is imported from various countries like Egypt, Jordan & Morocco and also procured locally within country. The company is registered under the GST laws for payments of GST/IGST besides being paying the customs duty on import of Rock Phosphate.

3.2. The applicant is registered under the MPGST/ CGST Act 2017 vide GSTIN-23AAACK2342Q1ZI.

4. QUESTION RAISED BEFORE THE AUTHORITY –

The below question have been formed in relation to the services being provided by applicant to the recipients:

4.1. Double-taxation on freight portion of imported goods-

4.1.1. Goods imported and IGST levied on CIF Value (which includes freight) + Basic Custom Duty + Social Welfare Cess.

4.1.2. IGST levied again on the freight component (Ocean Freight) on reverse charge basis.

In such circumstances, to levy and collect once again the Integrated Tax under the same Act on the 'supply'(same aspect) amounts to double taxation.

5. RECORD OF PERSONAL HEARING -

5.1 Shri Kapil Binakiya, CA appeared on behalf of the applicants for personal hearing on electronic mode on 01.10.2020 and he reiterated the submissions already made in the application submit copies of certain documents and requested that the same may be taken on record. Accordingly, the documents submitted have been taken on record for consideration.

5.2. Khaitan Chemicals & Fertilizers Ltd. is mainly engaged in the manufacturing of Single Super Phosphate (Fertilizer), Sulphuric Acid (Chemical). For the manufacture of Single Super Phosphate (SSP), the major raw material required is Rock Phosphate which is imported from various countries like Egypt, Jordan & Morocco and also procured locally within country. The company is registered under the GST laws for payments of GST/IGST besides being paying the customs duty on import of Rock Phosphate.

5.3. Rock phosphate and other materials is imported only on CIF (sum of Cost, Insurance & Freight) basis. In CIF basis purchases, the freight invoice is issued by the foreign shipping line to the foreign exporter. The importer (i.e. Khaitan Chemicals &



Fertilizers Ltd.) is concerned only with the purchase of goods and the suppliers of rock phosphate are responsible for transportation of goods upto the custom frontier of India. The company neither have any invoice of ocean freight nor has any idea of payments and the amount of ocean freight by the foreign exporter.

5.4. Reference to various acts for levying IGST on imported goods and determining the value for calculation of IGST:

- Section 5(1) of the IGST Act, 2017 provides for circumstances when IGST would be applicable. It states IGST is charged on all interstate supplies (goods or services or both) except the supply of alcoholic liquor for home consumption. Provided IGST on imported goods is charged:
 - and collected according to the provisions of section 3 of the Customs Tariff Act, 1975 and
 - on such a value as is decided under tariff act at a time when duties of customs are charged on such goods under Customs Act 1962.
 - As per Section 3(7) of the Customs Tariff Act, 1975, any article imported into India, would be liable to integrated tax, on the value as determined under Section 3(8).
 - As per Section 3(8) of the Customs Tariff Act, 1975, the value of imported article for the purpose of IGST shall be the aggregate of value of imported article under Section 14(1) of the Customs Act and shall include all duties of customs excluding IGST and compensation cess.
 - As per Sec. 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods.
 - As per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, transaction value shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, **costs of transportation to the place of importation, insurance**, loading, unloading and handling charges.
- Thus, with regards to the above sections of various acts, on importation of goods, IGST shall be levied on the sum of CIF (Cost, Insurance & Freight) value of the goods and all duties of customs.

5.5. The company, at the time of importation, pays Customs Duty on the CIF value of the goods (rock phosphate and other material) imported. The company also pays the 'Integrated Tax' (known as IGST) under the IGST Act, 2017, on the imported material on the CIF Value plus Customs Duty. The said CIF value is the sum of cost, insurance and freight, which implies that this value includes the value of the Ocean Freight.

5.6. As per **Notification No. 8/2017-Integrated Tax (Rate)**, IGST shall be levied on the inter-state supply of services of transportation of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory



to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

As per **Corrigendum dated 30-06-2017 to the Notification No. 8/2017-**

Integrated Tax (Rate), where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10 % of the CIF value (sum of cost, insurance and freight) of imported goods.

As per **Notification No. 10/2017-Integrated Tax (Rate)**, in case of services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services. Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory shall be considered as the recipient of services.

With reference to the above notifications, IGST is levied on freight components (Ocean Freight) and payable by the importer (KCFL) under reverse charge mechanism. Furthermore, the value of Ocean Freight is deemed to be 10% of the CIF value as the actual value of freight is not known.

5.7. The company therefore pays IGST on the freight component, known as Ocean Freight, under reverse charge mechanism. Since the company neither has any invoice of the ocean freight nor any idea of the same, therefore, the above-mentioned deeming fiction for the value of freight is applied. As per this deeming fiction, 10% of the CIF value is considered to be the Ocean Freight and hence IGST is again paid (on reverse charge basis) on this 10% value of CIF.

5.8. Thus, the company is paying the IGST twice on the same amount. Firstly, IGST on the CIF Value + Customs Duty and secondly on the Ocean Freight which is 10% of the CIF Value. This is amounting to double taxation on freight portion of imported goods –

- Goods imported and IGST levied on CIF Value (which includes freight) + Basic Custom Duty + Social Welfare Cess.
- IGST levied again on the freight component (Ocean Freight) on reverse charge basis.

In such circumstances, to levy and collect once again the Integrated Tax under the same Act on the 'supply' (same aspect) amounts to double taxation.

5.9. There have been various cases on the same matter of double taxation of Ocean Freight. One of the notable cases was Mohit Minerals Pvt. Ltd. vs Union of India.



In this case, the company is engaged in importing non-cooking coal from Indonesia, South Africa and U.S.A. and supplying it to various domestic industries including power, steel, etc. The writ-applicant discharges the customs duty on the imported products at the time of each import and such value includes the value of freight on which customs duty is demanded and paid. The writ-applicant is liable to pay integrated tax in terms of provisions of the Integrated Goods and Services Tax Act, 2017 (IGST/Integrated Tax Act) and accordingly the writ-applicant is paying the integrated tax at the time of import itself, which also includes value of Ocean Freight involved in imported coal. The integrated tax (IGST) is levied again on reverse charge basis on the Ocean Freight for which the writ-applicant is already paying the integrated tax at the time of import with the value of imported coal. Thus, the writ-applicants challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods. **Gujarat High Court** in this matter pronounced the judgement that as per section 14 of Customs Act, assessable value of goods includes freight amount which represent the expenditure on transportation of goods. IGST is already paid on freight element by including it in assessable value. Therefore, payment of IGST separately on the ocean freight will amount to double taxation. Thus, IGST cannot be imposed on the same freight amount by treating it as a supply of service since freight also suffers IGST as a part of the assessable value of imported goods. This is necessary to avoid the vice of double taxation.

5.10. The company imports on CIF basis, and therefore is not concerned about the freight and is not knowing even about the charges for the same, which is the sole responsibility of the supplier of the rock phosphate outside India. Thus, the company deems the freight amount to be 10% of the CIF value.

5.11. Therefore, the company firstly pays IGST on the total of CIF Value and Customs Duty. The CIF value referred here includes the freight component which is paid by the supplier itself. Secondly, the company again pays IGST on the deemed value of freight (10% of CIF Value) on reverse charge basis. Thus, the company is paying IGST on the same amount and same supply two times which implies double-taxation on Ocean Freight.

5.12. As referred above in Annexure-1, in Mohit Minerals Pvt. Ltd. vs Union of India (Gujarat High Court), the applicants have challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the applicants as the importer of the goods. Gujarat High Court in this matter pronounced the judgement that as per section 14 of Customs Act, assessable value of goods includes freight amount which represent the expenditure on transportation of goods. IGST is already paid on freight element by including it in assessable value. Therefore, payment of IGST separately on the ocean freight will amount to double taxation. Thus, IGST cannot be imposed on the same freight amount by treating it as a supply of service since freight also suffers IGST as a part of the assessable value of imported goods. This is necessary to avoid the vice of double taxation.



Therefore, considering the IGST paid twice on Ocean Freight (once on total CIF value and again on deemed 10% of CIF Value) and also the judgement of Gujarat High Court, we are seeking your clarification in this matter of double-taxation and allow us to not make any payment towards IGST on ocean freight under RCM.

5.13. On the date of hearing the Applicant was asked by this authority to clarify how the application comes under purview of section 97(2) of GST Act and as the Applicant has paid Rs. 5000/- IGST and has not paid the requisite fees required for advance ruling in CGST(5000/-) and SGST(5000/-) so as a default it was directed to pay the requisite fees.

5.14. On the query following argument was given by the Applicant.

1. As per the corrigendum issued on June 30, 2017 in regards to Notification No. 8/2017-Integrated Tax (Rate) dated June 28, 2017, the importer of the goods is required to pay IGST on Reverse Charge Mechanism on the amount of deemed ocean freight equal to 10% of the value of goods imported. Since the company is importing the raw material i.e. Rock Phosphate, therefore presently the company paying the IGST on Reverse Charge Mechanism on the amount of deemed ocean freight equal to 10% of the CIF value of goods imported.
2. The company also paid IGST on CIF value of goods imported, which includes value of goods imported + Freight + Custom Duty + Social Welfare Cess.
3. Since the company has already paid IGST On freight component and also paying IGST under RCM for deemed ocean freight equal to 10% of CIF value, which leads to double taxation on the ocean freight.
4. Therefore the company filed application for advance ruling under section 97(2)(e) of CGST Act "Determination of the liability to pay tax on any goods or service of both" for whether the company is required to pay IGST on Reverse Charge Mechanism on the amount of deemed ocean freight equal to 10% of the value of goods imported even after IGST has already been paid on CIF value at the time of import of goods.
5. The Applicant also submitted the requisite fees for Advance Ruling i.e. Rs. 5000 in CGST and Rs. 5000 in SGST on 29.10.2020. Hence the time limit for passing Advance Ruling begins from 29.10.2020.

6. DISCUSSIONS AND FINDINGS –

6.1. The Authority carefully considered the submissions made by applicant in the application, pleadings on behalf of Applicant made during the course of personal hearing.

The arguments and assertions made by the applicant along with supporting cases and documents in support of such claims were examined and the following are noted:

6.2. As per Section 20 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) read with Section 97 of the Central Goods and Services Tax Act, 2017 (CGST Act), an application for advance ruling can be made only if the question is in respect of any of the following:

- a. Classification of any goods or services or both
- b. Applicability of a notification issued under the provisions of this Act
- c. Determination of time and value of supply of goods or services or both



- d. Admissibility of input tax credit of tax paid or deemed to have been paid
- e. Determination of the liability to pay tax on any goods or services or both
- f. Whether applicant is required to be registered
- g. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

6.3. The applicant in the Advance Ruling has submitted that the present application is in respect of a question about determination of the liability to pay tax on any goods or services or both, thus the question can only be in context of the GST laws.

6.4. In their application, the principal assertion of the applicant is that levying GST on reverse charge basis on the freight on imports made on CIF basis amounts to double taxation and therefore not sustainable. Before entertaining this advance ruling application, it needs to be considered whether this question can be legally proposed before the Advance Ruling Authority in terms of the law?

6.5. It becomes important to address this question first since that is the basis on which all the other findings assume their significance. The applicant is proposing a question under the category of 'determination of liability to pay tax'. This category is not specifically defined, and neither is it clearly mentioned anywhere in the Act as to what constitutes a valid question within the meaning of this category. It is therefore pertinent to establish that if the question is to determine the liability to pay tax, it is appropriate to first judge if the question proposed before the Advance Ruling Authority is in fact falling under the said category in terms of common parlance.

6.6. From the principal assertions put forth by the applicant in their application, it appears that the levy of IGST on reverse charge on imports made on CIF basis on ocean freight is being challenged on the grounds that doing so would tantamount to double taxation. However, in order to opine whether double taxation exists or not, the Advance Ruling Authority would inevitably have to opine not only on the applicability of a notification issued under law, but also on the rules issued under the Customs Act. This is clearly outside the purview of aspects that the Advance Ruling Authority is competent to look into.

6.7. Furthermore, while the question proposed before the Authority is whether the liability to pay tax exists or not, the applicant himself is not denying the existence of such a liability. The only assertion is whether the existence of such a liability creates irregularities in respect of tax laws outside the limited applicability of the IGST Act. In other words, the existence of such a liability is not being challenged by the applicant in the current application, rather the constitutional validity of the liability is being questioned. In other words, the applicant himself admits that the liability to pay tax exists, and is saying that the liability 'should not' exist since it is against the fundamental principles established by various Hon'ble Courts based on their interpretations of the various statutes and the Constitution of India. Therefore, the question proposed before the Advance Ruling Authority is not whether the liability exists or not, but whether such a liability is constitutionally valid or not.

6.8. This Authority is of the view that based on the detailed reading and understanding of Section 97 of the CGST Act, an application for Advance Ruling can



only be made to determine the "liability to pay tax" on any goods or services or both. Therefore, no application can be made to determine whether the liability is constitutionally valid or not. Such power rests only with the courts. The applicant have quoted the case of Hon'ble Gujarat High Court wherein the court upheld that the levy of IGST on reverse charge basis amounts to double taxation and is thus not sustainable in law. The applicant has the right to approach the courts for similar principle, but the same is not within the purview of the Advance Ruling Authority to comment upon.

6.9. Accordingly ruling is being passed.

7. Ruling

- 7.1. Therefore, this Authority is of opinion that the current application is not covered within the scope of Section 97 of the CGST Act and thus, the Advance Ruling Authority cannot comment upon the question put forth before them under the said provisions. The application is therefore disposed of as such..
- 7.2. The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

(Virendra Kumar Jain)
(Member)

(Manoj Kumar Choubey)
(Member)

Copy to:- No. 10/2020/A.A.R/R-28/42

INDORE Dated 08/12/2020

1. Applicant
2. The Principal Chief Commissioner, CGST& Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST& Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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