

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax (Member)
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax (Member)

GSTIN Number, if any/ User-id		27AAACE2422P1ZL
Legal Name of Applicant		Enmarol Petroleum India Pvt. Ltd.
Registered Address/Address provided while obtaining user id		F-14, Everest, 7th Floor, Tardeo Road. Mumbai City, Maharashtra - 400034.
Details of application		GST-ARA, Application No. 53 Dated 13.07.2018
Concerned officer		Shri Ashok G. Hedau State Tax Officer (C-610) Nodal Div - 3, Mumbai 4th Floor, GST Bhavan, Mazgaon. Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	
B	Description (in brief)	The Applicant is an authorized dealer of M/s. Innospec Limited a company registered in the England and Whales. The Applicant sells the marine fuel additive chemicals of Innospec Limited to shipping lines in India and outside India.
Issue/s on which advance ruling required		(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Enmarol Petroleum India Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following ISSUE. .

- 1) Whether the applicant is liable to pay GST on the supply of goods located outside India to customers within India without physically bringing the goods to India?
- 2) Whether the out & out supplies in the facts of the present case will be considered as export supplies or exempted supplies for the purpose of the GST?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02 FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-
Statement of relevant facts having a bearing on the questions raised

1. **Brief Facts**

- 1.1. Applicant is a private limited company registered under the provisions of the Companies Act, 1956. The Applicant is, inter alia, engaged in the business of the trading in marine fuel additive chemicals.
- 1.2. The Applicant is an authorized dealer of M/s. Innospec Limited a company registered in the England and Wales. The Applicant sells the marine fuel additive chemicals of Innospec Limited to shipping lines in India and outside India.

- 1.3. In the relevant fact of the present Advance Ruling Application, one M/s. AZA Shipping Pvt. Ltd., an Indian Company, placed a purchase order no. 721 on the Applicant dated 02.02.2018, requisition no 2000188 dated 08.01.2018, for 75 Ltrs of Innospec Fuel Specialities Octamar L15 Product. The said requirement has been specifically placed for the vessel M T CHAFA to be delivered to the vessel at Singapore Port on 13.01.2018 as per the email dated 08.01.2018. Copy of the P. O. No. 721 dated 02.02.2018 is marked as Annexure - 3. Copy of the email dated 08.01.2018 from Aza Shipping to Applicant is marked and annexed herewith as Ann - 4.
- 1.4. On receipt of the above confirmed purchase order from the Aza Shipping, the applicant placed purchase order on the M/s. Innospec Limited vide P.O. No. EPM-1718-608 dated 08.01.2018 for delivering 75 Litres of OCTAMAR LI-5 to vessel M T Chafa at Singapore. Copy of the P.O. No. EPM-1718-608 dated 08.01.2018 raised by the applicant on the Innospec Limited is marked and annexed as Annexure - 5.
- 1.5. The said order placed by the applicant on Innospec was confirmed by vide Order Confirmation document dated 10.01.2018. A copy of the order confirmation dated 10.01.2018 is marked and annexed herewith as Annexure-6
- 1.6. Thereafter on 11.01.2018, Innospec Limited delivered the goods through its Singapore Logistics Partner M/s. CWT Logistics Pte. Ltd. to the vessel MT Chafa at Singapore Port vide delivery order dated 11.01.2018 duly received by the vessel's Chief Engineer. A copy of the delivery order dated 11.01.2018 is marked and annexed herewith as Annexure - 7.
- 1.7. Thereafter, Innospec Limited raised invoice on the applicant on 13.01.2018 vide Invoice No. VSS1002165 in USD. A copy of the said invoice dated 13.01.2018 from Innospec Limited to applicant is marked and annexed herewith as Annexure - 8.
- 1.8. Thereafter, the Applicant raised an invoice on its customer M/s. AZA Shipping Pvt. Ltd. vide Invoice No. 2017-18-111 dated 18.01.2018 in INR. The copy of the invoice dated 18.01.2018 from Applicant to AZA Shipping is marked and annexed herewith as Annexure - 9.
- 1.9. The Applicant states that, the Applicant has not charged GST on the invoice raised to AZA Shipping considering the said supply to be non-taxable under GST in India.

Statement containing the applicant's interpretation of law and or facts as the case may be, in respect of the aforesaid question(s)

The Applicant is not liable to charge on the out and out transaction.

The Applicant submits that the above supply effected by the Applicant is not liable for GST in India on following grounds:

- a) The said supply does not take place in India
- b) The said supply is an out & out transaction
- c) The place of supply for the said transaction cannot be determined under Section 10 of Section 11 of the IGST Act, 2017
- d) Section 7(5) of the IGST Act, 2017 is also not applicable in the facts of the present case
- e) The goods are not consumed in any state in India.

The above grounds are elaborated in detail herein below:

2. The supply in the present transaction has taken place outside India. The India GST provisions will not apply to such transaction

- 2.1. The Applicant submits that as per Section 1 of the CGST Act, 2017 and Section 1 of the IGST Act, 2017, the GST Act applies only whole of India except the State of Jammu and Kashmir.
- 2.2. The term "India" has been defined under Section 2(56) of the CGST Act, 2017 as under:
(56) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976, and the air space above its territory and territorial waters,
- 2.3. Thus, on a plain reading of the above definition it is clear that the GST is applicable only to Supply as defined in Section 7 of the CGST Act, 2017 within the defined India.
- 2.4. The definition of India means territory of India as defined in Article 1 of the Constitution of India and its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.
- 2.5. The Applicant submits that, in the present facts of the case, though the supplier and the recipient is located in India, the supply in the form of sale of goods has taken place in Singapore where the goods are located and the delivery has been given at Singapore Port.
- 2.6. The said territory of Singapore does not fall under the definition of India and hence such supply would not be covered under the ambit of CGST Act, 2017 or IGST Act, 2017.
- 2.7. Hence, the aforesaid transaction would not be liable to GST in India.

3. The Applicant submits that the above transaction in question is an out & out transaction not liable to GST in India.

- 3.1. The Applicant submits that above transaction in question is an out and out transaction not liable to GST in India. In other words, the aforesaid transaction is neither import goods into India nor export of goods outside India.
- 3.2. The Application submits that following provisions of GST are relevant for the purpose of the understanding out and out transaction:
- 3.3. Section 2(5) of the IGST Act, 2017 defines export of goods as under:
2(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
- 3.4. Section 2(10) of the IGST Act, 2017 defines "import of goods" as under:
2(10) "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;
- 3.5. Firstly, the above definitions are with reference to the movement of goods and not the location of the supplier or recipient.
- 3.6. In the present case, admittedly there is no movement of goods into India or from India. The goods are in Singapore Port only. Thus, the above transaction can neither be considered as import or export of the goods.
- 3.7. Secondly, the Place of supply of the of an import or export of goods is determined as per Section 11 of the IGST Act, extracted as under:
*11. The place of supply of goods,
 (a) imported into India shall be the location of the importer;
 (b) exported from India shall be the location outside India."*
- 3.8. It is submitted, the place of supply as per Section 11 can be determined only in case the transaction has resulted into import of goods or export of goods from India. Where there is no import of goods or export of goods, the above provision of Section 11 for determining the place of supply will not apply.
- 3.9. Hence, the applicant submits that the above transaction in question is an out and out transaction not liable to GST in India.
4. The Applicant further submits that, the place of supply cannot be also be **determined under Section 10 of the IGST Act, 2017.**
- 4.1. The Applicant submits that Section 10 of the IGST Act, 2017 determines the place of supply of goods for supplies other than imports and exports.
- 4.2. The Applicant submits that Section 10 is only relevant for determining the place of supply of goods movement of which is has taken place within India. As discussed above no provision of Section 10 can apply to a transaction where the entire movement has taken place outside India. Since the Act itself is applicable to India, therefore the Section 10 is also restricted to movement of goods within India only.
- 4.3. The above intention of the legislature is further clear from the scheme Chapter V of the IGST Act, 2017.
- 4.4. The Applicant submits that from the scheme Chapter V of the IGST Act, 2017, it can be seen that Section 10 is for determining the place of supply of goods other than import and export. Section is for determining the place of supply of goods for import and export. Section 12 is for place of supply of services for domestic transactions. Section 13 is for determining place of supply of service for international transaction.
- 4.5. Thus, it can be concluded that Section 10 if the IGST Act, 2017 is applicable for place of supply of goods in a domestic transaction.
- 4.6. In the present case, since the supply of goods is entirely outside India and not leg of the transaction is even remotely taking place in India, place of supply cannot be determined under Section 10 of the IGST Act, 2017.
5. **The Applicant submits that Section 7(5) of the IGST Act, 2017 is also not applicable in the facts of the present case.**
- 5.1. The Applicant submits that Section 7(5)(a) of the IGST Act, 2017 provides that where the supplier is located in India and the place of the supply is outside India, then the supply will be treated as place of supply in the course of inter state trade or commerce. The said Section 7(5) is extracted below for ready reference:
*Sec (7)-Inter-State supply
 (5) Supply of goods or services or both, -
 (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,
 shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*
- 5.2. The Applicant submits that above Section 7(5)(a) is also not applicable in the facts of the present case. For Section 7(5)(a) to apply there should be two variables available: a) supplier is located in India and b) Place of supply is outside India.
- 5.3. The applicant submits that in the present case both the above variable are absent. Firstly, the location of the supplier of goods is not defined under the GST Act. Only location of supplier of service is defined. Thus, as far as the goods is concerned, there can be no location of the supplier. In any case, even if it is held that location of the supplier has to be interpreted contextually, then the same has to be located qua a particular supply made under the GST Act. Since, in the present case, the sale is taking place outside India, it is not a supply under the GST Act and hence location of the supplier qua that sale cannot be determined under the Act.



- 5.4. Secondly, as explained above, the place of the supply for the transaction in question cannot be determined under the GST Act, neither under Section 10 nor under Section 11. Thus, even the second variable for Section 7(5)(a) is not determinable.
- 5.5. Thus, in view of the above submission, even Section 7(5)(a) will not be applicable in the facts of the present case.
6. **The Applicant submits that the GST is destination based consumption tax. Since there is no consumption in India, there can be levy of GST.**
- 6.1. Lastly, the Applicant submits that, GST is a destination based consumption tax. The same is taxable in India only if the consumption of the goods or services takes place in India.
- 6.2. Since in the present case, the consumption of the goods does not take place in India, the said transaction will not be taxable in any State in India.

03. **CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

I The Jurisdictional Officer MUM-VAT-C-610 of Nodal Div. 3 after examined the said application with legal submission along with relevant record submitting herewith written contention as under .

Point in Question : Please refer No 14 of ARA - 01

Commodity : Octamar LI-5 Product (HSN code-3811)

Contention : As per the documents submitted by the dealer it is no way proved that the delivery of the said goods is made at Singapore (out of territory of India). This office is therefore of the opinion that the commodity in question is delivered in the territory of India and liable for GST @ 18% under HSN code 3811 w.e.f. 14.11.2017.

HEARING

The case was taken up for Preliminary hearing on 08.08.2018 when Sh. Rahul Thakkar, Advocate along with Ms. Ritu Chaudhary , Director appeared and made written and oral submissions for admission of application as per contentions in their ARA. Jurisdictional Officer, Sh. Ashok G Hedau, State Tax Officer (C-610), Nodal Div. 3, Mumbai appeared & stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 05.09.2018. Shri Rahul Thakkar, Advocate along with Ms. Ritu Chaudhary , Director appeared and made oral and written submissions. Jurisdictional Officer, Sh. Sanjay Shegaokar, State Tax Officer (C-610), Nodal Divn. 3, Mumbai appeared and made written submissions.

05. **OBSERVATIONS**

We have gone through the facts of the case, documents on record and submissions made by the applicant. The issue put before us is in respect of a transaction which is/would be on the lines as below: -

1. The applicant is engaged in the business of the trading in marine fuel additive chemicals.
2. The Applicant is an authorized dealer of M/s. Innospec Limited a company registered in the England and Wales. The Applicant sells the marine fuel additive chemicals of Innospec Limited to shipping lines in India and outside India.
3. In the present case, one M/s. AZA Shipping Pvt. Ltd., an Indian Company, placed a purchase order no. 721 on the Applicant dated 02.02.2018, requisition no 2000188 dated

08.01.2018, for 75 Ltrs of Innospec Fuel Specialities Octamar L15 Product. The said requirement has been specifically placed for the vessel M T CHAFA to be delivered to the vessel at Singapore Port on 13.01.2018 as per the email dated 08.01.2018.

4. On receipt of the above confirmed purchase order from the AZA Shipping, the applicant placed purchase order on the M/s. Innospec Limited vide P.O. No. EPM-1718-608 dated 08.01.2018 for delivering 75 Litres of OCTAMAR LI-5 to vessel M T Chafa at Singapore.
- 1.5. The said order placed by the applicant on Innospec was confirmed by vide Order Confirmation document dated 10.01.2018.
- 1.6. Thereafter on 11.01.2018, Innospec Limited delivered the goods through its Singapore Logistics Partner M/s. CWT Logistics Pte. Ltd. to the vessel MT Chafa at Singapore Port vide delivery order dated 11.01.2018 duly received by the vessel's Chief Engineer.
- 1.7. Thereafter, Innospec Limited raised invoice on the applicant on 13.01.2018 vide Invoice No. VSS1002165 in USD.
- 1.8. Thereafter, the Applicant raised an invoice on its customer M/s. AZA Shipping Pvt. Ltd. vide Invoice No. 2017-18-111 dated 18.01.2018 in INR.

The Applicant states that, the Applicant has not charged GST on the invoice raised to

AZA Shipping considering the said supply to be non-taxable under GST in India.

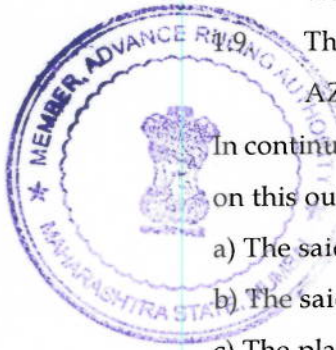
In continuation we find that the applicant has contended that GST is not liable to be paid by them on this out and out transactions on the following grounds:

- a) The said supply does not take place in India
- b) The said supply is an out & out transaction
- c) The place of supply for the said transaction cannot be determined under Section 10 of Section 11 of the IGST Act, 2017
- d) Section 7(5) of the IGST Act, 2017 is also not applicable in the facts of the present case
- e) The goods are not consumed in any state in India.

In view of the above situation, the Applicant has raised the below two questions:-

- 1) Whether the applicant is liable to pay GST on the supply of goods located outside India to customers within India without physically bringing the goods to India?
- 2) Whether the out & out supplies in the facts of the present case will be considered as export supplies or exempted supplies for the purpose of the GST?

In view of the detailed facts put up before us we find that the applicant would be purchasing goods from M/s Innospec on the basis of purchase orders received from their customer in India and the said goods would be delivered by M/s Innospec from outside India to the ship/vessel of the customer which is also outside India (non-taxable territory) i.e. Singapore. The order received by the applicant from their customers in India and order placed by them on



M/s Innospec are back to back orders. Thus it is very clear that the goods are delivered by M/s Innospec from a place situated outside the taxable territory of India to their customer's vessel which is also located outside the taxable territory of India. Thus we find that the transaction is similar to the selling of goods on High Seas Sale basis since in both the cases the goods purchased do not cross the customs frontiers of India.

In view of the above facts we would be required to refer to the provisions of IGST Act, 2017. First of all to confirm the nature of supply of present goods i.e. whether inter-state or intra-state we are required to refer to Chapter IV of the IGST ACT, 2017, which reads as under:-

CHAPTER IV DETERMINATION OF NATURE OF SUPPLY

Inter-State supply

7. (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in,-

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) 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.

Intra-State supply

8. (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:-

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

We find that Section 7(2) of the IGST Act reads as under:-

“Section 7(2) 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”

Thus it is very clear that supply of goods imported into the territory of India till they cross the customs frontier shall be treated as supply of goods in the course of inter-state trade or commerce.

From the transactions placed by the applicant before us there is no doubt that the goods of the applicant would be imported goods if they are brought from outside the country into India and it is clear that when the said goods are delivered/supplied from a place outside India to a

place outside India, these goods have not crossed the customs frontiers of India Thus clearly the transaction in these goods are in the nature of inter-state supply as per Section 7(2) of the IGST Act.

Now when we are clear that the subject transaction in question is in the nature of inter-state sales, the liability to tax in respect of these goods would be as per Section 5 of the IGST Act which reads as under

CHAPTER III LEVY AND COLLECTION OF TAX

Levy and collection

5. (1) Subject to the provisos 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 provisos 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,

- (2)
- (3)
- (4);
- (5)

We find that proviso to Section 5(1) of the IGST Act states that "Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisos 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".

Thus from the above it is clear that integrated tax on goods imported into India is to be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 and Section 12 of the Customs Act, 1962 and the same is to be levied and collected at the time of import into India. The goods are considered to be imported into India only after they clear the customs frontier after compliance of applicable procedures and payment of duty as applicable.

Thus as per Section 7(2) of the IGST Act and proviso to Section 5(1) of the IGST Act it is very clear that in respect of import goods there is no levy and collection except in accordance with the provisos of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975. Section 12 of the Customs Act, 1962 provides that custom duties which includes



integrated tax in respect of imported goods would be levied only at the time of import or export of goods.

Thus in case of goods supplied on an out an out basis as is in the present case, there is no levy till the time of their customs clearance in compliance with Section 12 of the Customs Act and Section 3 of the Customs Tariff Act. In view of this the import goods sold from and to a non-taxable territory, though they are clearly in the nature of inter-state supply would come in the category of "exempt supply" as no duty is leviable on them except in accordance with proviso to Section 5(1) of the IGST Act.

We find that in the definition of exempt supply as given in Section 2(47) of the CGST Act is as under:-

Section 2(47) of the Central Goods and Services Tax (CGST) Act, 2017, "exempt supply" means 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 Integrated Goods and Services Tax Act, and includes non-taxable supply".

Further we find that Section 2(78) of the CGST Act defines non-taxable supply which is as under:- "As per Section 2(78) of the Central Goods and Services Tax (CGST) Act, 2017, "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act".

Thus it is very clear that the goods sold in the subject transaction are non-taxable supply as no tax is leviable on them till the time of customs clearance in accordance with and compliance of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff act, 1975.

We find that the above legal position is further reiterated and confirmed by Circular No. 3/1/2018 - IGST dated 25.05.2018 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 53/2018-19/B-

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Mumbai, dt. 10/10/2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1:- Whether the applicant is liable to pay GST on the supply of goods located outside India to customers within India without physically bringing the goods to India?

Answer :- Answered in the negative.

Question 2:- Whether the out & out supplies in the facts of the present case will be considered as export supplies or exempted supplies for the purpose of the GST?

Answer :- The supplies in the present case would be "non-taxable supply" as per Section 2(78) of the CGST Act, 2017 which means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services tax Act.



sd
B. V. BORHADE
(MEMBER)

sd
PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax
5. Joint commissioner of State tax , Mahavikas for Website.

sd
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.