

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	27AAACK9486B1ZE
Legal Name of Applicant	K Uttamlal Exports Pvt. Ltd.
Registered Address/Address provided while obtaining user id	196/198, Samuel Street, Bhagwan Bhuvan, 1st Floor, Mumbai - 400009.
Details of application	GST-ARA, Application No. 57 Dated 26.07.2018
Concerned officer	Maharashtra, Mumbai Central Div- 1
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	
B Description (in brief)	Applicant is a merchant exporter.
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 K Uttamlal Exports Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following questions.

- 1) *Whether the goods exported out of India directly by the manufacturer mentioning the applicant as Third Party Exporter for the purpose of Foreign Trade Policy will be considered as exports at the hands of the Applicant under the GST laws?*
- 2) *If the said transaction is held to be exports at the hands of the applicant under GST then whether it will qualify as zero rated supply?*

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".

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 question(s) raised

- 1.1. Applicant is a company dealing in various chemical products. Applicant is engaged in the business of exporting chemicals to M/s Ampak Company Inc. (referred to as "Ampak") in USA.
- 1.2. The Applicant submits that, it does not own any manufacturing facility in India. The Applicant procures the chemicals from the manufacturers for export to Ampak.
- 1.3. The relevant fact of the present Advance Ruling Application is narrated in brief as under:

- 1.4. The Applicant received an order for export of Linear Alkyl Benzene Sulphonic Acid 96%, on 8/8/2017 vide Purchase Order Number: P17013051 from Ampak. Copy of P.O Dated 8/8/2017 is marked and annexed herewith as **Annexure 3**.
- 1.5. On receipt of the above confirmed purchase order from Ampak, Applicant placed back to back purchase order on M/s Sai Fertilizers & Phospates Pvt Ltd. (hereinafter referred to as "Sai Fertilizers") for Linear Alkyl Benzene Sulphonic Acid 96% on 09/08/2017 vide P.O. Number # KUEM/SFPPL/090817. Copy of P.O Number #KUEM/SFPPL/090817 is marked & attached herewith as Annexure 4.
- 1.6. On receipt of above confirmed P.O Number #KUEM/SFPPL/090817 dt 09/08/2017 from the Applicant, Sai Fertilizers manufactured & exported the goods directly from its premises under the Commercial Invoice No. SF/EX/17-18/0053 dt 22.08.2017 from the Nhava Sheva Port. Copy of the Commercial Invoice dt 22/08/2017 is marked & attached herewith as **Ann. 5**.
- 1.7. The Applicant further states that for availing the benefit under the Foreign Trade Policy of the India (hereinafter referred to as FTP), the goods have been exported directly by the manufacturer by filing Shipping Bill No. 8172604 dated 22.08.2017. The Shipping Bill mentions the Applicant as the Third Party Exporter as per the condition of the FTP. Copy of the Shipping Bill dated 22.08.2017 is marked and annexed herewith as Annexure 6.
- 1.8. The Applicant states that, the Bill of Lading No. MSCUUD802643 prepared by the Shipping Line for the said exports also mentions the applicant as the third party exporter. Copy of the Bill of Lading is marked and annexed herewith as Annexure 7.
- 1.9. Applicant states that on export of the goods, they raise the invoice on Ampak vide invoice no. 16033-A. Copy of the invoice no 16033-A is marked and annexed herewith as Annexure 8.
- 1.10. Applicant submits that, they have realized foreign currency for the above exports on 09.03.2018. The Bank Realization Certificate (BRC) is issued in the name of the Applicant on 14.03.2018. The copy of the Bank Realization Certificate is marked and annexed herewith as Annexure 9.
- 1.11. As far as GST is concerned, the Applicant has claimed the above supplies as exports while filing the GST Returns. The Applicant has Letter of Undertaking (LUT) valid for the period of the export concerned in the above transaction.
- 1.12. The applicant submits that, Sai Fertilizers has also claimed the above supply of goods as exports under GST on payment of the IGST. The copy of the GST invoice of Sai Fertilizers is marked and annexed herewith as Annexure 10.

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

2. **The Applicant submits that the supply made by the Applicant to Ampak amounts to export under the GST law.**
- 2.1. The Applicant submits that the above transaction in question is an export supply made by the Applicant under the GST laws. In other words, the Applicant has exported the goods outside India as far as the GST law is concerned.
- 2.2. The Application submits that following provisions of GST are relevant for the purpose of the understanding export supply.
- 2.3. 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;
- 2.4. Firstly, the above definition is with reference to the movement of goods and not actual person moving the goods.
- 2.5. In the present case, admittedly there is movement of the goods from India to USA pursuant to an export order placed on the Applicant. The goods are indeed exported out of India to USA which is outside India. Thus, the above transaction shall qualify as export supply under the GST law.
- 2.6. Secondly, the said exports supply will be at the hands of the Applicant only and not at the hands of the manufacturer Sai Fertilizers.
- 2.7. Applicant submits that it is the Applicant who has got the export order, the BRC and other documents in its name. The supply is made by the Applicant to Ampak USA. The manufacturer has made supply to the Applicant and not to Ampak USA though the Shipping Bill is prepared by the manufacturer Sai Fertilizer. Further in all the documents of the customs also, the applicant is named as the Third Party Exporter.
- 2.8. The Applicant submits that the payment has been received by the applicant in foreign currency which is evident from the BRC annexed along with the present application.



- 2.9. Thus, the Applicant is the exporter for the all purposes of the GST laws and not the manufacturer Sai Fertilizers.
3. **The Applicant states that manufacturer is an exporter under the FTP. As far as GST law is concerned, the Applicant alone is the exporter.**
- 3.1. The Applicant submits that the concept of Third Party Exporter is provided in Para 2.42 of the FTP. The said para is extracted below for ready reference:

2.42 *Third Party Exports*

Third party exports (except Deemed Export) a defined in Chapter 9 shall be allowed under FTP. In such cases, export documents such as shipping bills shall include name of both manufacturing exporter /manufacturer and third party exporter(s). Bank Realization Certificate (BRC), export order and invoices should be in the name of third party exporter.

- 3.2. Thus from a plain reading of the Para 2.42, the FTP it is clear that in case of third party exports, there are two exporters involved. One is the manufacturer exporter and the other person is the third party exporter. The manufacturer exporter can claim it as exports under FTP if the shipping bill has its name. Accordingly, the Customs Authorities have been issuing the shipping bill in the name of the manufacturer exporters.
- 3.3. However, all other documents such as export order, BRC, invoice is in the name of the third party exporter.
- 3.4. In the present case Sai Fertilizers is the manufacturer exporter under FTP and the Applicant is the third party exporter.
- 3.5. All the BRC and other documents are in the name of the Applicant except for the Shipping Bill. However, in the shipping bill also the name of the applicant appears as the third party exporter.
- 3.6. Thus, though under the FTP manufacturer is considered as the exporter as per Para 2.42, for the GST law only the applicant can be considered as the exporter.
- 3.7. The applicant submits that what may be considered as export under the FTP does not have a binding effect on the GST law. Under GST law, the export supply has been defined and accordingly the exported has to be construed.
- 3.8. Thus, even though the Shipping Bill only mentions the Applicant as the Third Party Exporter, as far as GST is concerned the Applicant only will be the exporter.
4. **The Applicant submits that above transaction is a zero rated supply by the applicant.**
- 4.1. The Applicant submits that once it is an export of the Applicant under GST, the said export supply will be considered as zero rated supplies under Section 16 (1) of the IGST Act, 2017.
- 4.2. Thus, the applicant shall be said to have made the zero rated supplies under the IGST Act, 2017 in respect of the goods exported under the shipping bill mentioned above.

Additional submissions on 18.09.2018

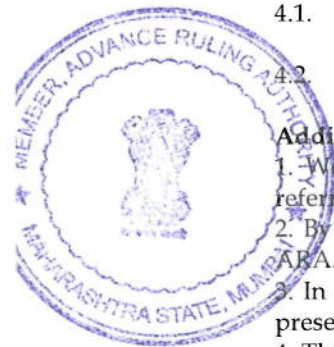
1. We are writing this letter of behalf of our client, M/s. K Uttamlal Exports Pvt. Ltd. (herein after referred to as "Applicant") who has applied for advance ruling application in Form GST ARA - 01.
2. By the above referred letter, the Jurisdictional Authority has submitted his reply before this Hon'ble ARA.
3. In reply to the said submissions made by the Ld. Jurisdictional Authority, the Appellant is filing the present submissions:
4. The Applicant submits that the Applicant is a 100% exporter and has claimed refund of the unutilized balance of ITC. The Applicant has not claimed refund of ITC only on those transactions where the Applicant has purchased the goods on payment of GST and exported the same in its own name.
5. The Applicant submits that the Applicant has not claimed refund on ITC on third party exports transactions. In other words, the Applicant has not claimed any refund on the exports where the Applicant is appearing as Third Party Exporter in the Shipping Bill.
6. The Applicant submits that in the above referred letter dated 04.09.2018 of the Jurisdictional Authority, the Jurisdictional Authority has accepted that even for the Third Party Exports transactions the Applicant must be considered as Exporter as far as GST laws is concerned.
7. The Applicant further submits that Ld. Jurisdictional Authority has further stated that supplies made by the Applicant as Third Party Exports will qualify as Zero Rated Supplies.

Kindly take the above additional submission on record and oblige.

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

Please refer Application Reference No 57 dt 26.7.2018 for Advance Ruling in respect of M/s K Uttamlal Exports Pvt Ltd, (hereinafter referred to as applicant) preliminary hearing was fixed on



23.8.2018. The applicant had filed refund claim for unutilised ITC on account of export of goods. However, on scrutiny of refund claim, it was seen that applicant was third party exporter. The parawise comments in respect of the same is as follows

Annexure 1 (paras 1.1 to para 1.12). The party has submitted facts of the case. M/s K Uttamlal Exports Pvt Ltd is engaged in the business of exporting chemicals. Since they do not have any manufacturing facility, they procure chemicals from manufacturers. However, the goods are exported directly from the premises of the manufacturer to client. The export invoice, shipping bill, bill of lading all mention the manufacturer as exporter and M/s K Uttamlal Exports Pvt Ltd as the third party exporter. On export of goods, M/s K Uttamlal Exports Pvt Ltd raises the invoice to client and foreign currency is realised. The Bank Realisation Certificate (BRC) is issued in the name of M/s K Uttamlal Exports Pvt Ltd.

Annexure 2 Para 2 (2.1 to 2.9)- The applicant, M/s K Uttamlal Exports Pvt Ltd, has claimed to have exported the goods outside India. Section 2(5) of the IGST Act, 2017, defines export of goods as under "Export of goods" with its grammatical variations and cognate expressions means taking goods out of India to a place outside India.

There is no dispute regarding export of goods. The applicant is the third party exporter. The goods have been exported by the manufacturer directly from their premises to client. The export invoice, shipping bill, bill of lading also mention the manufacturer as "exporter" and M/s K Uttamlal Exports Pvt Ltd as the third party exporter.

Para 3- and 4 The applicant states that manufacturer is the exporter under the FTP. The manufacturer exporter can claim it as exports. The export invoice, shipping bill and bill of lading all are in the name of manufacturer exporter.

In addition to the above submissions, it may please also be noted that -

- 1) The same consignment is accounted as export by "manufacturer exporter" and "third party exporter". This may be consistent with FTP 2015-20, but it does not appear to be legal as far as GST Acts, 2017 are concerned.
- 2) ITC claimed by manufacturer exporter is acceptable as same is based on invoice issued in their name and GSTIN. But how third party exporter can claim ITC when no invoice is raised in his name. There is no supply to third party exporter as far as this export consignment is concerned.
- 3) Taxpayer has asked two questions for Advance Ruling (Point 14) Question 1- Whether the goods exported out of India directly by the manufacturer mentioning the applicant as Third Party exporter for the purpose of Foreign Trade Policy will be considered as exports at the hands of the Applicant under the GST laws. Yes, however, manufacturer exporter can also claim it as exports. The export invoice, shipping bill and bill of lading all are in the name of manufacturer exporter.
Question 2- If the said transaction, is held to be exports at the hands of the applicant under GST then whether it will qualify as zero rated supply? Yes, it will be counted as zero rated supply on part of Third party exporter. In addition, third party exporter cannot claim it as exempted supply, as done by applicant in their monthly return.

04. HEARING

The case was taken up for Preliminary hearing on dated 08.08.2018, when Sh. Rahul Thakkar, Advocate along with Sh. Janak Shah, Director and Sh. Amol Patil appeared and made written and oral submissions for admission of application as per contentions in their ARA. Jurisdictional Officer, Sh. Sandeep Gunjal. Asstt. Commissioner, Divn -I, CGST & C. Excise, Mumbai Central appeared & stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 05.09.2018, Rahul Thakkar, Advocate along with Sh. Janak Shah, Director & Sh. Amol Patil appeared & made contentions as per details given in their application. Jurisdictional Officer, Ms. Deepa Bhaskaran, Supdt., Division -I, CGST & Central Excise, Mumbai Central appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is in respect of a particular transaction effected by the Applicant in respect of an order for export of Linear Alkyl Benzene Sulphonic Acid 96%, on 8/8/2017 received from a foreign client namely. M/s Ampak, vide Purchase Order Number: P17013051 from Ampak.

The application was admitted on the basis of preliminary arguments and documents submitted to this office by the applicant. On being admitted the applicant made arguments and submissions as under:-

"The applicant, on receipt of the above confirmed purchase order from Ampak, has placed back to back purchase orders on M/s Sai Fertilizers and Phosphates Pvt Ltd. (hereinafter referred to as "Sai Fertilizers") for the said goods further to which Sai Fertilizers manufactured the said goods and exported the same directly from its premises under the Commercial Invoice and after filing Shipping Bill (where the Applicant is mentioned as the Third Party Exporter). The Bill of Lading prepared by the Shipping Line for the said exports also mentions the applicant as the third party exporter. Pursuant to export of the goods, the applicant raises invoice on Ampak. In respect of the said exported goods, the Applicant has received remuneration in foreign currency and the Bank Realization Certificate (BRC) is issued in their name. The Applicant has submitted that they have a Letter of Undertaking (LUT) valid for the period of the export concerned in the above transaction and has claimed the above supplies as exports while filing the GST Returns. The applicant has further submitted that Sai Fertilizer has also claimed the above supply of goods as exports under GST on payment of the IGST". Hence the first question is raised by the applicant as under:-

Q No. 1) whether the goods exported out of India directly by the manufacturer mentioning the applicant as Third Party Exporter for the purpose of Foreign Trade Policy will be considered as exports at the hands of the Applicant under the GST laws?"

As per the said subsection (2) of Section 97 of the CGST Act advance ruling can be sought by an applicant in respect of :-

- (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 the 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

In the present case on the basis of the arguments made by them and scrutiny of records submitted by the applicant and the arguments put forth by them, we find that their main question is whether the transaction effected in the present case can be considered as exports

made by them or the manufacturer exporter Sai Fertilizers. On proper and detailed examination of full facts as put by the applicant at the time of the final hearing, we find that this question is not covered under the purview of Section 97 of the CGST Act, 2017.

Hence we hold the subject application is not maintainable and cannot be entertained and therefore no opinion is given by us since the matter is beyond the purview of this Authority.

05. 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- 57/2018-19/B- 130 Mumbai, dt. 23/10/2018

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

Question 1:- *Whether the goods exported out of India directly by the manufacturer mentioning the applicant as Third Party Exporter for the purpose of Foreign Trade Policy will be considered as exports at the hands of the Applicant under the GST laws?*

Answer :- *Not answered since the question is not covered under the purview of Section 97 of the CGST Act, 2017.*

Question 2:- *If the said transaction is held to be exports at the hands of the applicant under GST then whether it will qualify as zero rated supply?*

Answer :- *Not answered in view of answer to Q. No. 1 above.*



— 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.


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.