
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO.RAJ/AAR/2018-19/14



Nitin Wapa Joint Commissioner	:	Member(Central Tax)
Sudhir Sharma Joint Commissioner	:	Member(State Tax)
Name and address of the applicant	:	M/s Chambal Fertilisers & Chemicals Limited, CFCL Complex, Post Gradepan, Kota- 325208
GSTIN of the applicant	:	08AAACC9762A1ZT
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	(d) Determination of liability to pay tax on any goods or services or both
Date of Personal Hearing	:	17.08.2018
Present for the applicant	:	Mr. Sanjay Jhanwar, (Advocate) and Ms Aditi Lodha (Advocate)
Date of Ruling	:	25.08.2018

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

The Issue raised by M/s Chambal Fertilisers & Chemicals Limited (here in after referred to as 'Applicant') is fit to pronounce advance ruling as it falls under ambit of the Section 97(2) (a), it is given as under:

(d) Determination of liability to pay tax on any goods or services or both.

Further, the applicant being a registered person, GSTIN is 08AAACC9762A1ZT, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the application is '**admitted**' to pronounce advance ruling.

1. **SUBMISSION OF THE APPLICANT:**

1. The applicant has sought an Advance Ruling on the applicability of Ocean freight Charges and System of double taxation with respect to import of raw materials of fertilizers.

The Applicant is engaged in the trading business of goods like DAP, MOP. The said goods are purchased from a country outside India and imported into India. The applicable rate of IGST (import as well as on sale) on DAP and MOP is 5%. The said goods are imported either on CIF (Cost Insurance and Freight) basis or on FOB (Free on Board) basis.

2 **Statement of facts:-**

While importing the said goods on CIF basis, the supplier/exporter located in the foreign country is liable to bear the cost of transportation of goods, from the respective country upto Indian ports. Hence, for the transportation of the goods, the supplier/exporter avails the services of a foreign shipping company, for bringing the said goods to India in a vessel.



The services by the foreign shipping entity of transportation of goods in a vessel to a port in India is an 'inter-state supply' in terms of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). Hence, IGST is leviable on the same under Section 5 of the IGST Act. As per the charging section i.e. Section 5, IGST has to be paid by the taxable person. However, as per the provisions of Section 5(3), the government by notification may specify certain categories of supply of services on which tax will be paid by the recipient of the service on reverse charge basis. Hence, it is evident that the government is empowered to notify the categories of supplies/services on which the tax shall be paid on reverse charge basis by the recipient.

In exercise of the abovementioned power, the Government issued the *Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017* (hereinafter referred to as the "RCM Notification"). Entry 10 of the RCM



SL. No.	Category of Supply of Services	Supplier of service	Recipient of service
10.	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.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

Notification is relevant to the present case. The said entry reads as follows:

The importer, in terms of the Customs Act, 1962 may or may not be the service recipient. Hence, the Notification appears to be ultra-vires to the provisions of the Act.

That under the service tax regime, i.e. prior to 01.07.2017, the government was empowered to notify the category of services on which tax was payable on reverse charge basis by the recipient of services or any other person. To this extent the provisions of the service tax regime differ from the current GST regime. In order to collect tax on the services of

transportation of goods by vessels upto a port in India, the government notified the importer (i.e. person other than the service provider or service recipient) as the person liable to pay tax. Since, the same was within the legislative competence of the Central Government, the same was intra-vires the provisions of the Finance Act, 1994 but the same is not the case with GST as the statute specifically provides for service recipient only.

While importing the said goods on FOB basis, the Applicant (importer) is liable to bear the cost of transportation of goods from the respective country upto Indian ports. Hence, for the transportation of the goods, the Applicant (importer) avails the services of a shipping entity for bringing the said goods to India in a vessel. In case the said shipping company is located outside India, then the Applicant importer pays the GST applicable on the supply of services of transportation of goods in a vessel on reverse charge basis in terms of Section 5(3) of the IGST Act.

Moreover, upon importation of the goods, customs duty is payable on the said goods at the time of clearance of the said goods. As per Section 7 of the IGST Act, import of goods will be considered as an inter-state supply. Hence, IGST is leviable on the same. However, as per the provisions of proviso to Section 5(1) of the IGST Act, the same is levied and collected in accordance with the provisions of Section 3 of the *Customs Tariff Act, 1975* (hereinafter referred to as the *Customs Tariff Act*) as amended by the *Taxation Laws (Amendment) Act, 2017* (hereinafter referred to as the *Amendment Act*), which levies the additional duty on the goods imported into the territory of India. The relevant provisions read as follows:



Section 5- Levy and Collection-

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Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962

Section 3- Levy of additional duty equal to excise duty, sales tax, local taxes and other charges—

(7) Any article which is imported into India shall, in addition, be liable to Integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a

like article on its supply in India, on the value of the imported article as determined under sub-section (8).

(8) For the purposes of calculating the Integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

(a) the value of the imported article determined under subsection 11) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).;

On the conjoint reading of proviso to section 5 of the IGST Act and section 3(7) of the Tariff Act, it can be inferred that integrated tax shall be levied on the goods imported into India. The said integrated tax shall be in addition to the other duties of customs as specified under section 3 of the Tariff Act. As per section 3(8) of the Tariff Act the integrated tax on the imported goods shall be levied on the value of the imported article determined in accordance with section 14(1) of the Customs Act.



Section 14 of the Customs Act lays down the provisions for determining the value of the goods. The said section reads as follows: *Section 14 - Valuation of Goods-*

(1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods 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 to the extent and in the manner specified in the rules made in this behalf:

As per section 14(1) of the Customs Act, the value of imported article shall be the 'transaction value'. The 'transaction value' is the price actually paid or payable for the Goods when sold for export to India for delivery, at the time and place of importation, provided that the buyer and the seller are not related and the price is the sole consideration for sale. Further, the proviso to section 14(1) states that the 'transaction value' of the imported article, among other charges as specified, will also include *cost of transportation to the place of importation*. Moreover, Rule 10 of the *Customs Valuation (Determination of Value of Imported Goods) Rules, 2007* (hereinafter referred to as the 'Valuation Rules') lays down the provisions to determine the 'transaction value' of the imported Goods. The said rule reads as follows:

Rule 10- Cost and Services

For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include - (a) the cost of transport of the imported goods to the place of importation;

As per the aforesaid rule, the cost of transportation of the imported Goods up to the place of importation will be included in the value of imported Goods. Therefore, from the combined reading of section 14(1) of the Customs Act and Rule 10(2) of the Valuation Rules, it is evident that ocean freight will be included in the transaction value of imported Goods.

3 Issues to be decided:-

The applicant has filed an application for Advance Ruling on the basis of above facts to give the ruling as to:-

- (a) Whether in the case of import of goods on CIF (COST, INSURANCE AND FREIGHT) basis, the Applicant (Importer) is liable to pay GST on the component of Ocean freight paid by the foreign supplier to the shipping company, as consideration for availing the service of transportation of goods by sea provided by the foreign shipping entity?

(b) Whether in the case of import of goods on FOB (Free on board) basis the Applicant (Importer), for the purpose of determination of value of goods for the payment of IGST on import of goods is required to exclude the value of the component of Ocean freight paid by the Applicant (importer) to the foreign shipping entity, on which already GST is paid by the applicant (importer) being the service recipient in order to avoid double taxation?

4. Personal Hearing (PH)

In the matter personal hearing was given to the applicant, Mr. Sanjay Jhanwar, (Advocate) and Ms Aditi Lodha (Advocate) of applicant appeared for personal hearing on 17.08.2018. During the PH they submitted a flow-chart depicting CIF and FOB. They have also submitted a Supreme Court judgement “ Govind Saran Ganga Saran v/s Commissionerate of Sales Tax and Ors”. They also submitted that the case may be decided as per submission already made in the application for Advance Ruling and the case may be decided at the earliest.

The jurisdictional officer in his comments has stated that the applicant in case of import of goods on CIF basis has to pay IGST on component of Ocean Freight paid by foreign supplier to the shipping company as per *Notification No. 10/2017-Integrated Tax (Rate) dated June 28, 2017*. He has further stated that for determination of value of import of goods on FOB basis, the component of Ocean freight will have to be included in the value of import of goods.

5. Findings , Analysis and Conclusion:

5.1 We find that the services supplied by the foreign shipping entity of transportation of goods in a vessel to a port in India is an 'inter-state supply' in terms of section 7 of the Integrated Goods and Services Tax Act,



2017 (hereinafter referred to as "IGST Act"). Hence, IGST is leviable on the same under Section 5 of the IGST Act. As per the charging section i.e. Section 5, IGST has to be paid by the taxable person.

The Entry No. 10 of the *Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (hereinafter referred to as the "RCM Notification")* reads as under:-

SL. No.	Category of Supply of Services	Supplier of service	Recipient of service
10.	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.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

Thus, as per the Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017, in the case of import of goods on CIF (COST, INSURANCE AND FREIGHT) basis, the Applicant (Importer) is liable to pay GST on the component of Ocean freight paid by the foreign supplier to the shipping company.

- 5.2 The Applicant also sought clarification as to whether in the case of import of goods on FOB (Free on board) basis the Applicant (Importer), for the purpose of determination of value of goods for the payment of IGST on import of goods is required to exclude the value of the component of Ocean freight?

Levy and collection of IGST is governed by the Section 5(1) of IGST Act, 2017 which reads as under:-

"Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of

alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.”



From the proviso to Section 5(1) of IGST Act, 2017, it is clear that the levy and collection of IGST on imported goods would be in accordance with the provisions of the Customs Tariff Act, 1975 and value of imported goods will also be governed by the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 issued under Customs Act, 1962.

Hence valuation of imported goods is to be done by the Customs Authority under the Customs Act, 1962 and this authority is not empowered to decide on the issue of valuation of imported goods. Therefore, this authority cannot give any findings regarding exclusion of any component of expenditure upon imported goods (Ocean freight) while determining the value of imported goods at the time of import.

The question raised by the applicant is regarding the determination of valuation of imported goods at the port. The issue regarding determination of value as sought by the applicant does not fall under the purview of CGST/RGST Act, 2017 as this issue should be correctly dealt as per the relevant provisions of the Customs Act, 1962.

Based on above facts along with provision of law the ruling is as follows:

RULING

- a. The applicant is liable to pay IGST on transportation of goods by vessel under Reverse Charge Mechanism (RCM) under Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017.
- b. Regarding exclusion of any component of expenditure upon imported goods (Ocean freight) while determining their value at the time of import, the same falls beyond the purview of Section 97 of CGST/SGST Act, 2017.

 25/8/18

NITIN WAPA
Member
(Central Tax)



 25/8/18
SUDHIR SHARMA
Member
(State Tax)

SPEED POST

M/s Chambal Fertilisers & Chemicals Limited,
CFCL Complex, Post Gradepan,
Kota- 325208.

F.No. IV(4)14/AAR/RAJ/2018-19/65-69

Dated. 11/9/2018

Copy to:-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone) & Member, Appellate Authority for Advance Ruling, NCR Building, Statue Circle , Jaipur-302005.
2. The Commissioner of SGST & Commercial Taxes Rajasthan & Member, Appellate Authority for Advance Ruling, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. Asstt. Commissioner, Circle Special-2, Kota, Commercial Taxes Dept, Kar-Bhawan, Chhatarpura, Kota, Rajasthan. 324007
4. Dy/Asstt. Commissioner, Central Revenue Building, CAD Circle, CGST Division - **H**, Kota 324009 (GST Range -XXXIII).

o/c
CGST

CS
Superintendent

