



AUTHORITY FOR ADVANCE RULING
ANDHRA PRADESH GOODS AND SERVICES TAX
D No. 5-56, Block-B, R.K. Spring Valley Apartments,
Edupugallu, Vijayawada-521151

Present:

D. Ramesh, Additional Commissioner of State Taxes... Member (State Tax)
S. Narasimha Reddy, Additional Commissioner of Central Tax... Member (Central tax)

AAR No. 08 /AP/GST/2019 dated: 22.02.2019

1	Name and address of the applicant	M/s Indian Potash Limited., Door no. 71-67 4/1 Exim Park, Behind Airport, IV/VA, Port Area, Visakhapatnam, Andhra Pradesh 530012
2	GSTIN	37AAACI0888H1ZF
3	Date of filing of Form GST ARA-01	05-12-2018
4	Date of Personal Hearing	01-02-2019
5	Represented by	Shri Ram Babu Gunturi, Chief Manager
6	Jurisdictional Authority State	Assistant Commissioner, Gajuwaka Circle, Visakhapatnam Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s Indian Potash Limited., (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST 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 APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s Indian Potash Limited (hereinafter referred to as "IPL", or "Company" or "Applicant" as required by the context) holding Goods and Services Tax ('GST') Registration No. 37AAACI0888H1ZF, incorporated in June 1955 having principal place of business at 71-67 4/1 Exim Park, Behind Airport, IV/VA, Port Area, Visakhapatnam, Andhra Pradesh 530012 are registered taxable person. The applicant is engaged in import-handling, promotion and marketing of fertiliser in the entire country.

The Applicant informed inter-alia, that;

- They import various fertilisers i.e. MOP, DAP, Urea, Complex Fertilisers etc., they also engaged in manufacture of cattle feed products, milk and milk products, refined sugar and also trading of gold and other precious metals;
- The applicable rate of GST on import/ supply of fertilizers is 5% if used as a fertilizer (Serial Number 182A, 182B, 182C and 182D of Schedule I) and when fertilizers are not used as fertilizers (industrial use), applicable rate of tax is 18% (Serial Number 42, 43, 44 and 45 of Schedule III);
- Further, transportation of fertilizers by rail and road (services of goods transport agency) is subject to 5% GST and payable under reverse mechanism. The Company primarily imports fertilizers on Cost inclusive of freight basis. In few instances the fertilizers are also imported on FOB basis. Where the goods are imported on FOB basis, the company engages a shipping company to provide the service of transportation of goods in a vessel from supplier's location outside India to Indian Port. Whereas if goods are imported on cost inclusive of freight basis, the foreign supplier engages a foreign shipping company to provide the service of transportation of goods in a vessel from the supplier's country to the Indian Port.



- Under GST, values of subsidy is excluded from the value of taxable supply. Exclusion of subsidy from the value of taxable supply, results in accumulation of Input tax credit under GST. In addition, payment of GST under reverse charge mechanism on ocean freight is also contributing to accumulation of credit.

The applicant had filed an application in form GST ARA-01, Dt:05.12.2018, by paying required amount of fee for seeking Advance Ruling.

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner, SGST Gajuwaka Circle, Visakhapatnam, A.P. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the central tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017.

In response, the concerned jurisdictional officer stated that there are no pending proceedings relating to the applicant and no proceedings were passed on the issue, for which the advance ruling sought by the applicant.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:

The applicant seeks advance ruling on the basis of above facts;

- 1.1 Whether such ocean freight is leviable to GST as a supply of service or not?
- 1.2 Whether the said transaction does qualify as import of service or not?
- 1.3 Whether their transaction will qualify as inter-state supply or not?
- 1.4 Whether the applicant can be deemed as the recipient of the service or the person liable to pay tax or not?
- 1.5 Whether the applicant is liable to pay tax under reverse charge mechanism or not?
- 2.1 Levy of IGST on ocean freight as a service, while levying Customs duties by including freight charges also in the value of imported goods, amounts to double taxation or not?
- 2.2 Exclusion of value of subsidy and levy of IGST on ocean freight are leading to accumulation of credit or not? and is it not against the spirit of GST law which is intended for eliminating the cascading effect ?

5. RECORD OF PERSONAL HEARING:

Shri Ram Babu Gunturi, Chief Manager of the applicant company authorized to represent the applicant appeared for personal hearing on 01.02.2019 and they reiterated the submission already made in the application.



6. DISCUSSION AND FINDINGS:

We have examined the issues raised in the application. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

As per the said sub-section (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 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.*

The clarification sought for vide query Nos. 1.1 to 1.5 are covered under clauses (b) and (e) above but the queries at 2.1 and 2.2 are not covered in any of the above clauses. The issues covered are examined as hereunder.

Whether the transaction is import of service or not and it is inter-state supply or not

The Section 7 of IGST Act determines whether a transaction is an Inter-state supply or an Intra-state Supply. Sub-section 4 of Section 7 of IGST Act states the supply of services imported into India shall be treated as Inter-state supply. Clause (c) of sub-section 5 of Section 7 of IGST Act states that supply of goods or services or both in the taxable territory, not being an intra-State supply and not covered elsewhere in this section shall be inter-state supply. Therefore, the said transaction qualifies as import of service and it is inter-state supply.

Whether the applicant can be deemed as the recipient of the service or not

As per sub-section 3 to Section 5 of IGST Act read with sub-section 1 of Section 5 of IGST Act, on inter-state supply of goods or services, by way of notification the Government may notify specific category of services where the recipient of service will be considered as the person liable to pay tax.



The term recipient is defined in sub-section 93 of Section 2 of CGST Act as below:

"recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In the present case, the service of transport by vessel is for the goods imported by the applicant. The consideration for both goods and also for service i.e. transport of the same by vessel, is paid by the applicant. The applicant's view that they are paying only for goods and not for transport of the same is incorrect as the said consideration paid for the transaction is inclusive of freight also. Therefore, the applicant is the recipient of both goods and services.

Whether the applicant is liable to pay tax on the transaction referred under reverse charge mechanism or not.

The relevant provisions governing payment of tax on ocean freight under Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 read with Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017, are as follows:

Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 is as follows:

S.No.	Category of Supply of Services	Supplier of Service	Recipient of Service
(1)	(2)	(3)	(4)
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 No. 8/2017-Integrated Tax (Rate), dated 28-6-2017

Sl.No.	Chapter, Section or Heading	Description of Service	Rate (percent.)	Condition
9	Heading 9965 (Goods transport services)	(i) ***	***	***
		(ii) Transport 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.	5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken. Explanation: This condition will not apply where the supplier of service is located in non-taxable territory. [Please refer to Explanation no. (iv)]

The para 4 of Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017 as amended by Corrigendum dated 30.06.2017 vide CBIC F. No. 334/1/2017 -TRU is as follows:

"4. 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."

Therefore, an importer is required to pay IGST on the ocean freight in terms of Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 read with Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017. There is no exemption available under the GST provisions for payment of IGST on ocean freight where IGST is paid on the goods imported.

Accordingly, we pass the following order.



RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

The transportation of goods in a vessel from a non-taxable territory to taxable territory amounts to import of service and such ocean freight is leviable to IGST as an inter-state supply of service and the Applicant, being the importer, are liable to pay IGST under reverse charge mechanism prescribed vide Notification No. 10/2017 - Integrated tax (Rate) dated 28.06.2017, by following the valuation as per Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017, irrespective of valuation adopted for the import of goods i.e. FOB or CIF.

The issues raised on double taxation, subsidies and cascading effect leading to accumulation of credit fall beyond the purview of Section 97 of CGST / APGST Act,2017.

Sd/-D. RAMESH
Member (State Tax)

Sd/-S.NARASIMHA REDDY
Member (Central Tax)

//t.c.f.b.o//


Assistant Commissioner(ST),
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To,

1. M/s Indian Potash Limited., D.No. 71-67 4/1 Exim Park, Behind Airport, IV/VA, Port Area, Visakhapatnam, Andhra Pradesh 530012

Copy To

1. The Assistant Commissioner (ST), Gajuwaka Circle, Visakhapatnam Division is instructed to serve the order copy on the dealer and resubmit the served copy immediately.
2. The Assistant Commissioner of Central Tax, Visakhapatnam Central CGST Division, 3rd Floor, Door No. 28-14-10, Suryabagh Building, (Opp. "V-Max" Theatre) Visakhapatnam-530020.

Copy Submitted To

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.

