M/s Chowgule and Company Private Limited (appellant before the Appellate Authority; applicant before the Goa AAR)

Appellate Authority for Advance Ruling — Goa

Order No. GOA/AAAR/01/2019-20/3072, dated 03 February, 2020 (the listi… Dated **25.02.2020**

Q Questions Before the Authority

- Whether the appellant, which exports services and not goods, is entitled to a refund of unutilised input tax credit on export under Section 16(3)(a) of the IGST Act and Section 54(3) of the CGST Act (AAR question 4, the subject of the appeal).
- Additional ground, raised on 16.01.2020: whether the AAR erred in holding that the appellant is liable to pay IGST on imported iron ore under Section 3 of the Customs Tariff Act, 1975 read with Section 5(1) of the IGST Act, 2017 (AAR questions 1 and 2).

F Facts

The appellant is a Goa-registered company that imports iron ore, converts it into iron ore pellets under job work, and exports the pellets to the non-resident supplier or its nominees. Import duty is said to be exempt under General Exemption No. 66 (Notification No. 32/97-Cus). The appellant contends that it exports a service and not goods, and that the second proviso to Section 54(3) therefore does not apply.

H Ruling

Refund of unutilised ITC on export of iron ore pellets (AAR Q4; appeal ground)	**Not entitled to refund; AAR ruling maintained**	The pellets are goods covered by the Second Schedule to the Export Tariff, so they are **subject to export duty** within the second proviso to Section 54(3) even though the export duty rate is nil. The order does not expressly number a RULING section; this row reflects the order's disposition of the appeal.
Additional ground: IGST liability on import of iron ore (AAR Q1 and Q2)	**Rejected on limitation; no ruling on merits**	Filed on 16.01.2020, beyond the 30-day period under Section 100(2) CGST Act and the further period allowed by its proviso.

The Appellate Authority rejected the appeal and maintained the AAR ruling. It held that the appellant is not entitled to a refund of unutilised input tax credit, because the exported iron ore pellets are goods "subject to export duty" even though the applicable export duty rate is nil. The additional ground challenging IGST on the import was rejected as time-barred, so the authority did not examine its merits.

R Reasoning

The authority accepted that the pellets are exported, so the services characterisation was rejected as untenable.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

It relied on the Supreme Court and High Court line of authority that a nil rate of duty is still a rate, and that an exemption notification does not remove goods from the category of goods leviable to duty. It read the words "subject to export duty" in the second proviso as meaning "leviable to export duty", and contrasted them with clause (ii), which expressly excludes nil-rated supplies. It treated the word "shall" as making the bar mandatory. The additional ground was held to be a fresh appeal against a different part of the ruling, filed outside the statutory period, so it could not be entertained.

P Provisions Relied On

- Section 54(3), second proviso, CGST Act, 2017
- Section 54(3), clause (ii) of the first proviso, CGST Act, 2017 (as contrasted)
- Section 16(3)(a), IGST Act, 2017 (as cited in the appeal and questions)
- Section 100(1) and 100(2), CGST Act, 2017 (appeal period and proviso)
- Section 101(1), CGST Act, 2017
- Section 3, Customs Tariff Act, 1975 and Section 5(1), IGST Act, 2017 (raised in the additional ground)
- Section 12 and Section 25(1), Customs Act, 1962 (as applied by the order)
- Notification No. 1/2016-Customs dated 4 January 2016 (export duty rate on iron ore pellets, cited by the appellant)
- Notification No. 32/97-Cus, General Exemption No. 66 (cited in the AAR questions)
- Collector of C.Ex., Hyderabad v. Vazir Sultan Tobacco Ltd., 1996 (83) ELT 3 (SC)
- Jain Shudh Vanaspati v. UOI, 1983 (14) ELT 1688 (Del.)
- Collector of Customs, Bombay v. New India Industries, 1985 (21) ELT 159 (Tribunal)
- Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co., 2018 (361) ELT 577 (SC)
- Union of India v. Dharmendra Textile Processors, 2008 (231) ELT 3 (SC)

! For the Practitioner

Exporters of goods listed in the Second Schedule to the Export Tariff at a nil export duty rate should expect the second proviso to Section 54(3) to bar refund of unutilised ITC, since the order treats nil-rated goods as subject to export duty. The order also shows that an additional ground filed more than 30 days after communication, even with the extension, will not be heard. It does not decide whether IGST is payable on imported iron ore under Section 5(1) of the IGST Act, and it does not settle how the refund bar applies to services exports.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> goa_aaar_01_2019-20_25.02.2020_ccpl.pdf

Prepared 18-11-2026.

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