M/s Indian Oil Corporation Ltd. (Appellant), GSTIN 19AAACI1681G1ZM as printed in para 2

Appellate Authority for Advance Ruling — West Bengal

Appeal Case No. 10/WBAAAR/Appeal/2018-2019 dated 10.12.2018 (the pr… Dated **10.12.2018**

Q Questions Before the Authority

- Whether or not GST paid on the railway freight for transportation of the refining crude petroleum oil, inter alia, High Speed Diesel (HSD), Motor Spirit (petrol) and Aviation Turbine Fuel (ATF) from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit.

F Facts

IOCL moves refined products, including ATF and other non-taxable supplies, from its Haldia Refinery in West Bengal to its export warehouse at Raxaul in Bihar under a bonded (B-3) arrangement, using CT-2 and ARE-3 forms. Export to Nepal Oil Corporation is made on Product Delivery Orders issued against an umbrella supply agreement, and final export clearance is done at Raxaul on ARE-1. The question is whether GST paid on railway freight for this inter-unit movement can be credited.

H Ruling

ITC on GST paid on railway freight for moving refinery goods (including HSD, MS and ATF) from Haldia Refinery to the Raxaul export warehouse	**Not available. Appeal dismissed and WBAAR ruling upheld.**	The order has no separate Q1/Ans RULING section. This row is taken from para 16 and the WBAAR ruling as affirmed in para 3. The transfer is held not zero-rated under s.16(1)(a) IGST and is treated as a non-taxable inter-State supply to a distinct person, so the freight credit cannot be claimed.

The Appellate Authority dismissed the appeal and upheld the WBAAR ruling. It held that the Haldia-to-Raxaul movement is not a zero-rated export and is not **inextricably linked** to the ultimate export to Nepal. The Raxaul warehouse is a distinct person, so the transfer is a non-taxable inter-State supply, and the freight credit is not available.

R Reasoning

The Authority held that the movement of goods under the bond and ARE-3 to Raxaul does not amount to export under s.2(5) IGST or s.5(1) CST Act, because the goods terminate at Raxaul, which is a distinct person under **s.25(4) CGST Act** . Place of supply was determined under s.10(1)(a) IGST as the location where movement terminates. It also relied on the fact that Product Delivery Orders, not the stock transfer, are the actual export orders, and that the NOC's independent surveyor and diversion risk mean the goods are not inextricably linked to export. The appellant's reliance on Oil India, English Electric, Hydrabad Engineering and South India Viscose was rejected as concerning sale or branch transfer situations, not the present ITC question. The appellant's reliance on s.16(2) IGST was not accepted because the movement was not a zero-rated supply.

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

P Provisions Relied On

- Section 100(1) of the WBGST/CGST Act, 2017 (appeal to the Appellate Authority)
- Section 16(1)(a) and 16(2) of the IGST Act, 2017
- Section 10(1)(a) of the IGST Act, 2017 (place of supply of goods)
- Section 2(5) of the IGST Act, 2017 (definition of export of goods)
- Section 25(4) of the CGST Act, 2017 (distinct persons)
- Section 2(47) and 2(78) of the CGST Act, 2017 (exempt and non-taxable supply), as referred to by the appellant
- Section 5(1) of the Central Sales Tax Act, 1956 (sale in course of export)
- Section 3(a) of the Central Sales Tax Act, 1956, as referred to by the appellant
- Clauses 3(a), 4.0 (g, h, i), 5(c) and 5.7 of the IOCL-NOC agreement, as cited in the order
- B-3 bond, CT-2 and ARE-3 and ARE-1 procedures under central excise export warehousing, as described in the order

! For the Practitioner

Practitioners can cite this order to show that the Appellate Authority treats an inter-unit or inter-warehouse movement from a refinery to a bonded export warehouse, where the goods terminate in another State, as a non-taxable supply to a distinct person rather than zero-rated export. Freight on such movements therefore carries a credit risk unless the export link is shown to be direct. The order does not decide whether the position would differ where the goods go directly to the foreign buyer or where the export proof is different, and it rests heavily on the facts of this agreement.

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 -> wbaaar_appeal_no.10_2018_dt._10.12.18.pdf

Prepared 27-10-2026.

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