M/s Chowgule and Company Private Limited (appellant), Chowgule House, Mormugao Harbour, Goa, GSTIN 30AAACC5479J1ZP

Appellate Authority for Advance Ruling — Goa

ORDER No. GOA/AAAR/01/2019-20/3072, dated 03 February, 2020 Dated **25.02.2020**

Q Questions Before the Authority

- Whether IGST at 5% of assessable value is applicable on import of iron ore for conversion into pellets and export of the resultant product (iron ore pellets) back to the same supplier, given that import duty is not applicable under General Exemption No. 66 (Notification No. 32/97-Cus dated 1 April 1997) for job work.
- If the answer to the first question is yes, whether the applicant, as recipient of the imported iron ore, is liable to pay IGST under its own GSTIN, being the consignee of the imported iron ore.
- If the answer to the first question is yes, whether the applicant can avail input tax credit for the IGST so paid under Section 16 of the CGST Act.
- Whether the applicant can claim refund of unutilised input tax credit on export of services under Section 16(3)(a) of the IGST Act and Section 54(3) of the CGST Act.

F Facts

The appellant imports iron ore, converts it into pellets under a job work arrangement, and exports the pellets to a non-resident party or to parties nominated by it. Import duty is not payable because of General Exemption No. 66. The appellant claimed that it exports a service rather than goods and so is entitled to refund of unutilised input tax credit. The Authority for Advance Ruling held that the appellant is liable to pay IGST on the import, may take credit of it, and is not entitled to refund under the second proviso to Section 54(3). The appellant appealed only on the refund question, and later added a ground on the IGST-on-import question.

H Ruling

Refund of unutilised ITC on export (question 4)	**Appeal rejected; advance ruling maintained. Not entitled to refund**	The second proviso to Section 54(3) CGST Act applies because the goods are subject to export duty, even though the rate is nil. The appellant's 'export of services' argument was rejected because the pellets are exported goods.
IGST liability on import of iron ore (questions 1 and 2), raised as additional ground	**Not decided on merits. Additional ground rejected as time-barred**	The ground was filed on 16.01.2020, beyond the thirty-day period under Section 100(2) CGST Act and the further extended period under its proviso. The original appeal did not challenge the AAR's answers on questions 1 to 3, so those answers stand unchallenged.

The Appellate Authority dismissed the appeal on the refund question and maintained the advance ruling that the appellant is not entitled to refund of unutilised input tax credit. It held that the pellets are goods 'subjected to export duty' because a nil export-duty rate is still a rate of duty. The additional ground challenging the

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IGST-on-import ruling was rejected as time-barred, so it was not decided on merits.

R Reasoning

The Authority found that the appellant admittedly exports the pellets themselves, so the export is of goods and not services. It read 'subject to export duty' in the second proviso to Section 54(3) as meaning 'leviable to export duty', so a nil rate under an exemption notification does not take the goods outside the proviso. It relied on the Supreme Court in Vazir Sultan Tobacco and on High Court and Tribunal decisions under Sections 12 and 25(1) of the Customs Act, 1962. It also noted that the proviso, unlike clause (ii) before it, has no 'nil rate' qualification, and that 'shall' is mandatory. On the additional ground, it applied the limitation rule in Section 100(2) of the CGST Act.

P Provisions Relied On

- Section 54(3) CGST Act, 2017, second proviso (no refund where goods exported are subject to export duty)
- Section 16(3)(a) IGST Act, 2017 (refund of ITC on zero-rated supply)
- Section 16 CGST Act, 2017 (input tax credit, as referred to in question 3)
- Section 100(1) and 100(2) CGST Act, 2017 (appeal and thirty-day limitation, with proviso)
- Section 101(1) CGST Act, 2017 (order of Appellate Authority)
- Section 97 CGST Act, 2017 (application for advance ruling)
- Section 3 Customs Tariff Act, 1975 read with Section 5(1) IGST Act, 2017 (IGST on import, additional ground only)
- Section 12 and Section 25(1) Customs Act, 1962 (as discussed in the case law cited)
- Notification No. 1/2016-Customs dated 4 January 2016 (export duty on iron ore pellets at 0%, as cited by appellant)
- General Exemption No. 66 (Notification No. 32/97-Cus dated 1 April 1997), as referred to in the question

! For the Practitioner

A practitioner advising an exporter of goods that are listed in the Export Tariff, even at a nil export-duty rate, can use this order to argue that the second proviso to Section 54(3) bars refund of unutilised ITC. It also shows that the 'export of services' label will not succeed where the goods themselves leave India. The order does not decide whether IGST is payable on the import of iron ore, because that ground was rejected as time-barred. It also does not settle the refund position for goods that are not listed as subject to export duty.

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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

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