Spaceage Syntex Pvt. Ltd. (as printed in the order; the listing reads 'Space age syntex Pvt. Ltd.')

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/23/2018-19, Date- 13.03.2019 Dated **13.03.2019**

Q Questions Before the Authority

- Whether GST is applicable on the sale and/or purchase of DFIA (Duty Free Import Authorisations), which the appellant contended is covered by serial no. 122A of Notification No. 2/2017-C.T. (Rate), as inserted by Notification No. 35/2017-C.T. (Rate) dated 13.10.2017, as duty credit scrips.

F Facts

The appellant, an exporter registered in Maharashtra, trades in DFIA, which are export incentive instruments issued by the DGFT under the Foreign Trade Policy. It sought an advance ruling on whether GST applies to their sale or purchase, arguing that DFIA are the same as duty credit scrips, which carry nil GST under serial 122A. The Advance Ruling Authority (AAR, ruling No. GST-ARA-13/2017-18/B-86 dated 06.08.2018) held that DFIA were liable to GST because they are issued under Chapter 4 of the FTP and not Chapter 3, and the appellant appealed.

H Ruling

Whether GST applies on sale or purchase of DFIA (Duty Free Import Authorisation)	**No GST. Nil rate under Sr. 122A of Notification 02/2017-C.T. (Rate) dated 28.06.2017, as amended by Notification 35/2017-C.T. (Rate) dated 13.10.2017**	AAR ruling set aside. The order states the holding in words and gives no HSN code. The Order section is the operative part, as no separate Q/A RULING section appears in the scan.

The Appellate Authority set aside the AAR ruling and held that **no GST is applicable** on the sale or purchase of DFIA under serial 122A of Notification 02/2017-C.T. (Rate), as amended by Notification 35/2017-C.T. (Rate). It reasoned that DFIA and duty credit scrips have the same basic nature and function, which is to set off basic customs duty on imports, so they are to be treated alike. The order is a single holding and does not follow a separate question-and-answer RULING format.

R Reasoning

The authority held that the term 'duty credit scrips' is not defined in the GST law, so it looked to Chapters 3 and 4 of the FTP 2015-20 (paras 3.02 and 4.25), which show that both instruments exist to set off basic customs duty under sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975. Relying on the functional test in Atul Glass Industries (1986) and the trade usage shown by letters from traders and importers, it treated DFIA and duty credit

scrips as the same in trade parlance. It also drew on the minutes of the 22nd GST Council meeting, which reduced the GST rate on these scrips to nil, and on the CBEC circular of 06.06.2018 (paras 6 and 7), read with the principle of noscitur a sociis, to find that the Board used 'duty paying scrips' and 'duty credit scrips' interchangeably. It therefore concluded that the tax treatment of the two instruments must be the same.

P Provisions Relied On

- Section 97 of the CGST Act, 2017 (advance ruling application)
- Section 99 of the CGST Act, 2017 and corresponding MGST Act provisions (constitution of appellate authority)
- Section 100 of the CGST Act, 2017 (appeal)
- Section 101 of the CGST Act, 2017 (appellate order)
- Notification No. 2/2017-C.T. (Rate) dated 28.06.2017, Sr. No. 122A
- Notification No. 35/2017-C.T. (Rate) dated 13.10.2017
- CBEC circular dated 06.06.2018 (paras 6 and 7, citing circular no. 46/20/2018-GST), and modification of circular no. 34/08/20…
- Foreign Trade Policy 2015-20, paras 3.02 (Chapter 3) and 4.25 (Chapter 4)
- Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975
- Minutes of the 22nd GST Council meeting (06.10.2017)
- Atul Glass Industries Ltd. (1986) 25 ELT 473 (SC), functional test
- Doctrine of noscitur a sociis

! For the Practitioner

A practitioner dealing with DFIA trading or with GST on export incentive scrips can cite this order for the position that DFIA attract nil GST under Sr. 122A. The order rests on the purposive reading of the 22nd GST Council minutes and on trade usage, so it is persuasive rather than binding authority. It does not decide whether the nil rate extends to other FTP instruments, and the AAR ruling it set aside remains a contrary position that the Department may test in a higher forum.

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 -> mah.aaar_ssrj.23-2018-19_13.03.19.pdf

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