M/s Chowgule & Co Pvt. Ltd. (the addressee block reads M/s Chowgule Industries Private Limited)

Authority for Advance Ruling — Goa

Advance Ruling No. GOA/GAAR/11 of 2018-19/514, dated 21/05/2019 (dat… Dated **21.05.2019**

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 iron ore pellets back to the same supplier, given that import duty is not payable under General Exemption No. 66 (Exemption Notification No. 32/97-Cus dated 01 April 1997) for job work.
- If the answer to question 1 is yes, whether the applicant, as recipient of the imported iron ore, is liable to pay IGST under its own GSTIN, as it is the consignee of the imported ore.
- If the answer to question 2 is yes, whether the applicant can avail input tax credit of 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 applicant runs a pelletisation plant at Shiroda, Goa, for making iron ore pellets. A non-resident party would arrange iron ore from abroad, which the applicant would import under its own GSTIN, though the ore would remain the non-resident's property. The applicant would convert the ore into pellets using locally purchased additives such as lime stone, bentonite and coke breeze, export the pellets to the non-resident or its nominees, and invoice the conversion charges in foreign exchange.

H Ruling

Q1 and Q2: Liability to pay IGST on import of iron ore for pelletisation and re-export, including under the applicant's own GSTIN	**Applicant is liable to pay IGST on import of iron ore**	The authority answered Q1 and Q2 together. It held that liability arises under section 5(1) of the IGST Act read with section 3 of the Customs Tariff Act, 1975, with value under section 12 of the Customs Act, 1962. It did not rule on the 5% rate, as no relevant notification was quoted.
Q1 (rate): Whether IGST at 5% of assessable value applies, given the exemption under General Exemption No. 66 (Notification No. 32/97-Cus)	**Not decided. Rate not ruled upon**	The authority held that Notification No. 32/97-Cus was not issued under the CGST, SGST or IGST Acts, so it has no jurisdiction over it. Absent any relevant GST notification quoted by the applicant, it could not rule on the rate.
Q3: Input tax credit of IGST paid on import under section 16	**Yes, eligible to avail input tax credit of IGST paid on import**	The ruling refers to section 16 of the IGST Act. The reasoning relies on section 16(1) of the CGST Act and the fact that the imported goods are used in the furtherance of business.

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

Q4: Refund of unutilised input tax credit on export under section 16(3)(a) IGST Act and section 54(3) CGST Act	**No, not eligible for refund of unutilised input tax credit**	Refund is barred by the second proviso to section 54(3) of the CGST Act. The authority treated the nil export duty on iron ore pellets under Notification 1-2016/Customs dated 04 January 2016 as a rate of tax, so the goods were treated as subjected to tax.

The authority ruled that the applicant is liable to pay IGST on the import of iron ore, and that it is eligible to take input tax credit of the IGST paid on import. It declined to rule on the 5% rate, because the exemption notification relied on was not issued under the GST laws and no relevant rate notification was quoted. It further held that the applicant is not eligible to claim refund of unutilised input tax credit on the export, because the export duty on iron ore pellets was reduced to nil, which the authority treated as a subjected-to-tax position attracting the exclusion in section 54(3)(ii).

R Reasoning

The authority first applied section 5(1) of the IGST Act, which charges IGST on imports in accordance with section 3 of the Customs Tariff Act, 1975, so IGST on the imported ore follows the customs valuation under section 12 of the Customs Act. It declined to examine the 5% rate, because the exemption notification relied on was not a GST notification and no relevant rate notification was quoted. On input tax credit, it held that the imported goods are used in the furtherance of business and so the credit is available under section 16(1) of the CGST Act. On refund, it applied the export of services test in section 2(6) of the IGST Act and the place of supply rule in section 13. It found that the processing of temporarily imported goods falls within the exclusion in section 13(3), so the place of supply is outside India and the activity is an export. It nonetheless denied refund because the export duty on pellets was reduced to nil, which it treated as a rate of tax, bringing the second proviso to section 54(3) into play.

P Provisions Relied On

Section 96, 97 and 98 of the CGST/GGST Act, 2017 (advance ruling framework)	
Section 5(1) of the IGST Act, 2017	Section 3 of the Customs Tariff Act, 1975
Section 12 of the Customs Act, 1962	
General Exemption No. 66 / Exemption Notification No. 32/97-Cus dated 01 April 1997 (held not to be a GST notification)	
Section 16(1) of the CGST Act, 2017	
Section 16 of the IGST Act, 2017 (as referred to in the ruling)	
Section 2(6) of the IGST Act, 2017 (export of services)	
Section 13(2) and 13(3) of the IGST Act, 2017 (place of supply)	
Section 16(3)(a) of the IGST Act, 2017	Section 54(3) and its second proviso of the CGST Act, 2017
Notification No. 1-2016/Customs dated 04 January 2016 (export duty on iron ore pellets reduced from 5% to nil)	

! For the Practitioner

The order is useful to job-work importers who bring in foreign-owned ore for processing and re-export, because it confirms that IGST is payable on such imports under the applicant's own GSTIN and that the IGST can be taken as input credit. It also shows that the export-refund route for unutilised credit can be shut off where the export duty is nil but the goods are still listed in the export tariff. It does not settle the applicable IGST rate, since the authority declined to rule on it, and it does not decide whether the job-work customs exemption applies. The ruling binds only the applicant, and the addressee block names a different entity, which should be checked before relying on it.

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 -> ara_order_11_2018_goa_chowgule_co._pvt_ltd.pdf

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