Enmarol Petroleum India Pvt. Ltd.

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-53/2018-19/B-127, Mumbai, dt. 10/10/2018 (day and month… Dated **10.10.2018**

Q Questions Before the Authority

- Whether the applicant is liable to pay GST on the supply of goods located outside India to customers within India without physically bringing the goods to India?
- Whether the out and out supplies in the facts of the present case will be considered as export supplies or exempted supplies for the purpose of the GST?

F Facts

The applicant is an authorised dealer of Innospec Limited (England and Wales) and sells marine fuel additive chemicals to shipping lines in India and abroad. AZA Shipping Pvt. Ltd., an Indian company, ordered 75 litres of Octamar LI-5 for the vessel MT Chafa, to be delivered at Singapore port, and the applicant placed back-to-back orders on Innospec. Innospec delivered the goods at Singapore through its logistics partner, Innospec invoiced the applicant in USD, and the applicant invoiced AZA in INR without charging GST.

H Ruling

Liability to pay GST on goods located outside India, supplied to a customer in India, without the goods being brought into India	**No. Answered in the negative.**	The goods never cross the customs frontier of India, so no levy arises at this stage.
Whether the out and out supplies are export supplies or exempted supplies	**Neither as such. The supplies are non-taxable supply under section 2(78) of the CGST Act, 2017.**	The order also describes the supplies as falling in the category of exempt supply in its reasoning, but the operative answer uses the non-taxable supply label. Tax would arise only on customs clearance of goods imported into India.

The authority answered Question 1 in the negative, so the applicant is not liable to pay GST on these goods. On Question 2, it held that the supplies are **non-taxable supply** under section 2(78) of the CGST Act, 2017, rather than export or exempt supplies. The authority reasoned that the transaction is an inter-state supply of imported goods whose levy is deferred until customs clearance.

R Reasoning

The authority compared the back-to-back sale to a high seas sale, since the goods never cross the customs frontier, and classed it as an inter-state supply of imported goods under section 7(2) of the IGST Act. It then relied on the proviso to section 5(1) of the IGST Act, which ties the levy on imported goods to section 3 of the Customs Tariff Act, 1975 and section 12 of the Customs Act, 1962, so tax is levied only at the point of customs duty. Because no levy arises until customs clearance, the supply falls outside the taxable category and is treated as

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

non-taxable under the definitions in sections 2(47) and 2(78) of the CGST Act. The authority finally relied on CBIC Circular No. 3/1/2018-IGST dated 25.05.2018 as confirming this position. The order does not expressly decide the concerned officer's contention that delivery was in India, nor the place-of-supply arguments under sections 10 and 11 raised by the applicant.

P Provisions Relied On

Section 2(47) of the CGST Act, 2017 (exempt supply)	Section 2(78) of the CGST Act, 2017 (non-taxable supply)
Section 7(1) of the IGST Act, 2017 (inter-State supply)	
Section 7(2) of the IGST Act, 2017 (supply of imported goods till they cross customs frontiers)	
Section 8(1) of the IGST Act, 2017 (intra-State supply, quoted)	
Section 5(1) of the IGST Act, 2017 and its proviso	Section 12 of the Customs Act, 1962
Section 3 of the Customs Tariff Act, 1975	CBIC Circular No. 3/1/2018-IGST dated 25.05.2018

! For the Practitioner

The ruling helps traders who sell goods lying outside India to foreign-going vessels or foreign locations, where the goods never enter India, because it holds that no GST is payable on such back-to-back sales. It also tells practitioners that the supply is classed as non-taxable rather than export or exempt, which matters for input tax credit and invoicing. It does not decide the place of supply under sections 10 or 11 of the IGST Act, or whether delivery in Singapore was in fact made outside India, and it binds only the applicant. Counsel should read the full order to check the officer's contention on delivery location.

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_53_2018_maharashtra_epi_pvt.ltd.pdf

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