M/s M.K. Agro Tech Pvt. Ltd.

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 97/2019, Date: 27-09-2019 Dated **27.09.2019**

Q Questions Before the Authority

- Whether under Reverse Charge Mechanism, IGST should be paid by the importer on ocean freight on the case of CIF basis contract?

F Facts

The applicant, a private limited company registered under the GST law, imports edible grade crude oil from overseas on CIF terms, with no separate charge for transportation. Basic Customs Duty, cess and IGST are paid at the Indian port on entry. The applicant contends that the freight element is already taxed as part of the customs value and should not attract IGST again under reverse charge.

H Ruling

IGST on ocean freight under reverse charge where goods are imported on CIF basis	**Yes. IGST is payable by the importer under reverse charge on the ocean freight.**	Rate of 5% under Notification 8/2017 entry 9(ii) read with Notification 10/2017 entry 10, as set out in the findings. The ruling itself does not restate the rate. The ruling is subject to the final decision of the Hon'ble High Court of Gujarat.

Subject to the final decision of the Hon'ble High Court of Gujarat , the Authority ruled that IGST should be paid by the importer on ocean freight in a CIF contract, under reverse charge. The Authority held that the tax on the freight is levied on the transport service, which is a distinct taxable transaction from the import of goods, so there is no double taxation. The ruling is expressly conditional on the outcome of the pending Gujarat High Court matter.

R Reasoning

The Authority accepted that entry 10 of Notification 10/2017-Integrated Tax (Rate) makes the importer, as recipient, liable to pay IGST under reverse charge on transport of goods by vessel from outside India to the customs station of clearance, and the applicant did not dispute leviability under these notifications. It reasoned that the freight forms part of the customs value under Rule 10(2) of the Customs Valuation Rules, 2007, but that the taxable event for IGST on goods is the import of goods, whereas the reverse charge levy is on a separate supply of transport services. On that basis it found two distinct taxable transactions and no double taxation. The order does not expressly decide the applicant's argument that the 'importer' cannot lawfully be the recipient under section 2(93) of the CGST Act, nor the composite supply and 10% deemed-value arguments, and the ruling is made subject to the pending High Court decision.

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

P Provisions Relied On

- Section 5(3) of the IGST Act, 2017
- Section 5 proviso of the IGST Act, 2017
- Section 7(2) of the IGST Act, 2017
- Notification No. 10/2017-Integrated Tax (Rate), entry 10
- Notification No. 8/2017-Integrated Tax (Rate), entry 9(ii)
- Section 2(93) of the CGST Act, 2017
- Rule 10(2) of the Customs Valuation (Determination of Value of Import Goods) Rules, 2007
- Section 3(7) and 3(8) of the Customs Tariff Act, 1975
- Section 14(1) of the Customs Act, 1962
- Section 12 of the Customs Act, 1962

! For the Practitioner

A practitioner advising importers on CIF contracts can rely on this ruling for the position that IGST on ocean freight is payable by the importer under reverse charge, despite the freight being in the customs value. The ruling is not binding on other authorities and is expressly subject to the Gujarat High Court decision, so it should be checked against that outcome before reliance. It does not resolve the applicant's challenge to the validity of treating the importer as recipient, nor the composite supply and 10% deemed-value points, which should be read in the full order.

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 -> kar_aar_97_2019_27.09.2019_atpl.pdf

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