

M/s BASF India Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 27/2017-18/B-36, Mumbai

Dated 21.05.2018

Q Questions Before the Authority

- The Applicant will be purchasing the goods from its overseas related party situated abroad based on purchase order received from its customers. While the goods are in transit, the goods will be sold by the Applicant to its customers before the goods are entered for customs clearance in India. Whether IGST will be leviable on such sale effected by the Applicant to customers who are known to them at the time of placing order on the overseas party?
- Whether input tax credit will have to be reversed, to the extent of inputs, input services and common input services used by the Applicant, in case the above transaction is not subjected to the levy of IGST by treating the same as an exempt supply for the purpose of Section 17 of the CGST Act?

F Facts

The applicant purchases goods from an overseas related party against purchase orders received from its Indian customers. While the goods are in transit to India, the applicant transfers title to the goods to its Indian customers on a high sea sales basis before customs clearance. The ultimate customer files the Bill of Entry and pays all applicable customs duties and IGST at the time of clearing the goods for home consumption.

H Ruling

Levy of IGST on high sea sales before customs clearance

Answered in the negative

IGST is payable only at the point of customs clearance by the buyer who files the Bill of Entry.

Reversal of ITC under Section 17 for high sea sales

Answered in the affirmative

High sea sales qualify as non-taxable/exempt supplies, triggering proportional ITC reversal.

The Authority held that **IGST is not leviable** on high sea sales effected by the applicant prior to customs clearance, as IGST on imported goods is levied only at the time of customs clearance. However, high sea sales constitute a non-taxable supply under Section 2(78) of the CGST Act, which falls within the definition of exempt supply under Section 2(47). Consequently, **input tax credit must be reversed** under Section 17 of the CGST Act to the extent of inputs, input services, and common input services used for such transactions.

R Reasoning

The Authority held that although high sea sales constitute inter-State supply under Section 7(2) of the IGST Act, the proviso to Section 5(1) specifies that IGST on imported goods is collected in accordance with Section 3 of the Customs Tariff Act, 1975 at the time of customs clearance. Thus, no IGST is leviable on the high sea sale transaction itself. However, because no tax is leviable under the GST Act prior to customs clearance, high sea sales fall under 'non-taxable supply' as defined in Section 2(78) of the CGST Act. Since Section 2(47) defines

exempt supply to include non-taxable supply, high sea sales are treated as exempt supplies. Consequently, Section 17 of the CGST Act mandates the reversal of input tax credit attributable to inputs, input services, and common input services used for effecting such sales.

P Provisions Relied On

Section 5(1) proviso of Integrated Goods and Services Tax Act, 2017

Section 7(2) of Integrated Goods and Services Tax Act, 2017

Section 2(47) of Central Goods and Services Tax Act, 2017

Section 2(78) of Central Goods and Services Tax Act, 2017

Section 17 of Central Goods and Services Tax Act, 2017

Section 3 of Customs Tariff Act, 1975

Section 12 of Customs Act, 1962

Circular No. 33/2017-Cus dated 01.08.2017

Circular No. 3/1/2018-IGST dated 25.05.2018

! For the Practitioner

This ruling establishes that high sea sales do not attract IGST at the time of transfer prior to customs clearance. However, under the legal framework existing at the time of this ruling, such transactions are classified as **non-taxable supplies requiring ITC reversal** under Section 17 of the CGST Act. Tax practitioners should note that subsequent statutory amendments to Schedule III of the CGST Act specifically addressed high sea sales.

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_aar_27_2017-18_b-36_basf_india_ltd.pdf

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