M/s. Halliburton Offshore Services Inc. (Drill Bits)

Authority for Advance Ruling — Andhra Pradesh

AAR No.07/AP/GST/2020 Dated **25.02.2020**

Q Questions Before the Authority

- Whether the import of drill bits for supply to ONGC at its location in India on consumption basis involves two supplies, namely (i) import into India of drill bits and (ii) indigenous movement from the port of import to ONGC's location.
- If two supplies are involved, whether two Essentiality Certificates are required: one for import of drill bits under serial no. 404 of Notification No. 50/2017-Customs dated 30 June 2017, and another for indigenous movement under Notification No. 3/2017-Central Tax (Rate) dated 28 June 2017.
- If the answer to the first question is no, whether the supply of drill bits to ONGC in India is covered by serial no. 404 of Notification No. 50/2017-Customs (under a single EC), so that no two separate ECs are required.

F Facts

The applicant, a global oilfield services provider, has contracted with ONGC to supply drill bits for drilling at 12 locations. Under the contract it acts as importer on record, importing drill bits (HSN 8207 1900) from Halliburton Energy Services Inc., USA, with ONGC as ultimate consignee. After import the goods are delivered to ONGC's sites on a consignment or sale-on-approval basis, with the applicant bearing transportation and insurance until delivery.

H Ruling

Whether import of drill bits for supply to ONGC on consumption basis involves two supplies (import into India; indigenous movement from port to ONGC location)	**Affirmative (two supplies)**	Import is a distinct inter-State supply till clearance by Customs. Post-import supply by the applicant to ONGC is a separate taxable supply.

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

Whether two ECs are required: one for import under serial no. 404 of Notification 50/2017-Customs, and one for indigenous movement under Notification 3/2017-Central Tax (Rate)	**Serial 404 of Notification 50/2017-Customs: BCD nil and IGST 5% on specified List 33 goods for petroleum operations under licences or leases granted to ONGC. Notification 3/2017-CT (Rate): exemption from central tax in excess of the specified rate, available only on the conditions in that notification.**	Customs concession requires, under Sl. No. 48 of the Customs notification, a certificate from a duly authorised Directorate General of Hydro Carbons officer, produced to the jurisdictional Deputy or Assistant Commissioner of Customs. The central tax exemption requires the same DGH certificate, produced to the Central or State Tax Deputy or Assistant Commissioner having jurisdiction over the supplier, at the time of outward supply.
Whether, if the first answer is no, a single EC under serial 404 covers the supply to ONGC	**Not applicable**	Not answered, as the answer to the first question was affirmative.

The authority held that the import of drill bits for supply to ONGC on consumption basis involves **two supplies** : the import into India and the subsequent indigenous movement and supply to ONGC's location. It held that the concessional customs rate under serial 404 and the concessional central tax exemption under Notification 3/2017-Central Tax (Rate) are each available only on fulfilment of their respective conditions, including production of a Directorate General of Hydro Carbons certificate. The third question was held not applicable given the answer to the first.

R Reasoning

The authority treated the import as a distinct inter-State supply under Section 7(2) of the IGST Act, which continues until the goods cross the customs frontier, with IGST on imports levied under the proviso to Section 5 of the IGST Act read with Section 3 of the Customs Tariff Act. It treated the post-import delivery to ONGC, involving invoicing and consideration, as a separate supply under Section 7(a) of the CGST Act, taxable under the CGST or IGST Act. It relied on Section 11 of the CGST Act and Section 6 of the IGST Act for the position that exemptions exist only through notification. It held that the central tax exemption under Notification 3/2017-CT (Rate) is conditional and that its conditions must be fulfilled. The Customs concession was treated as governed by the Customs law and its own notification conditions.

P Provisions Relied On

Section 97(2) and Section 98 of the CGST Act, 2017 and the APGST Act, 2017	
Section 7(2) of the IGST Act, 2017	Section 7(a) of the CGST Act, 2017
Section 5 of the IGST Act, 2017 (proviso on imported goods)	
Section 11 of the CGST Act, 2017	Section 6 of the IGST Act, 2017

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Section 3 of the Customs Tariff Act, 1975	Section 12 of the Customs Act, 1962
Serial no. 404 of Notification No. 50/2017-Customs dated 30 June 2017 (with Sl. No. 48 conditions and List 33)	
Notification No. 3/2017-Central Tax (Rate) dated 28 June 2017	

! For the Practitioner

This ruling is useful for importers supplying imported goods to Indian oil and gas operators on consignment or sale-on-approval terms, as it confirms that the import and the later domestic supply are treated as two separate supplies for GST purposes. It also shows that both the customs concession and the central tax exemption depend on a DGH certificate and must be produced to the proper officers at the right time. The order does not decide the valuation of the import, the time of supply on sale-on-approval, or the correct GST rate for the domestic supply, and it does not address whether the applicant can rely on the same certificate for both concessions.

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 -> ap_aar_07_2020_25.02.2020_hosi.pdf

Prepared 18-11-2026.

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