Wilhelmsen Maritime Services Private Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-136/2018-19/B-71 (last digit partly legible), Mumbai Dated **15.06.2019**

Q Questions Before the Authority

- Whether the advance ruling is sought to confirm that the supply of marine products to the owner or operator of a ship (delivered on board at an Indian port) will fall under Schedule III of the CGST Act, 2017.
- Whether the advance ruling is sought to confirm that the supply will be termed an export of goods and, if not, whether it is an intra-State or inter-State supply and which tax (CGST and SGST, or IGST) will be levied.
- Original question 1 (not pursued after reframing): whether delivery of goods to the owner of a ship proceeding to a foreign port at an Indian port is an export of goods under section 16 of the IGST Act, 2017. Original questions 2 and 3 concerned refund of GST paid on zero-rated exports and whether intra-State or inter-State tax applies.

F Facts

The applicant, a GST-registered group company, imports marine products such as cleaning chemicals, lubricants, welding equipment and spares from its overseas parent. The goods are stored either in a bonded warehouse or in a non-bonded warehouse after home-consumption clearance. The applicant invoices the owner or operator of a foreign-going ship, which has no place of business in India, and delivers the goods on board the vessel at an Indian port against payment in foreign currency.

H Ruling

Supply of goods from a bonded warehouse to a foreign-going ship (question 1: Schedule III of CGST Act)	**Falls under Schedule III of the CGST Act; exempt from GST**	Relies on entry 8(a), supply of warehoused goods to any person before clearance for home consumption. Goods in bond are not cleared for home consumption.
Supply of goods from a non-bonded warehouse to a foreign-going ship (question 1: Schedule III of CGST Act)	**Does not fall under Schedule III; not exempt from GST**	Goods were cleared into the non-bonded warehouse on payment of IGST or customs duty, so entry 8(a) does not apply.
Whether the supply is an export of goods; if not, whether intra-State or inter-State and which tax applies (question 2)	**Not answered**	The Authority held that the export question is outside the scope of section 97 and gave no opinion.

The Authority held that supply from a bonded warehouse falls under entry 8(a) of Schedule III to the CGST Act and is therefore outside GST, whereas supply from a non-bonded warehouse, where duty has been paid and the goods are cleared for home consumption, does not fall under Schedule III and is taxable. On whether the supply is an export of goods, the Authority held that the question is not maintainable under section 97 and gave no opinion on it.

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

R Reasoning

The Authority treated the warehoused goods as the subject of the transaction and examined entry 8(a) of Schedule III, read with Explanation 2 which adopts the Customs Act meaning of warehoused goods. It reasoned that goods in a bonded warehouse have not been cleared for home consumption, so the supply falls within entry 8(a). For non-bonded goods, it found that IGST or customs duty had been paid on clearance, so the exemption does not apply. On the export question, it held that the matter does not fall within the scope of section 97(2) of the CGST Act, so the application was not maintainable on that point and no opinion was expressed.

P Provisions Relied On

- Section 97(2) of the CGST Act, 2017 (scope of advance rulings)
- Section 98 of the CGST Act, 2017 (order of the Authority)
- Section 7 of the CGST Act, 2017 (scope of supply) and Schedule III, entry 8(a) and Explanation 2
- Section 2(56) of the CGST Act, 2017 (definition of India)
- Section 2(5) of the IGST Act, 2017 (definition of export of goods), as quoted by the parties
- Section 16 of the IGST Act, 2017 (zero-rated supply), as referred to by the parties
- Sections 9, 10 and 11 of the IGST Act, 2017 (place of supply), as quoted by the jurisdictional officer
- Section 87 and section 88(a) of the Customs Act, 1962, as cited by the parties
- Rule 18 of the Central Excise Rules, 2002, as cited by the parties

! For the Practitioner

A practitioner supplying ships from bonded stock can cite this order for the position that bonded-warehouse supplies to foreign-going vessels fall within Schedule III entry 8(a) and so carry no GST. It does not settle whether such supplies are exports, zero-rated, or entitled to refund, because the Authority declined to decide that question. The order also does not address the intra-State or inter-State characterisation, and the non-bonded position is adverse to the applicant.

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 -> maharashtra_aar_136_2018-19_wmspl_15.06.19.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com

Patron Accounting LLP