

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/13
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/02)

Date:08.03.2021

Name and address of the Appellant	:	M/s. Sterlite Technologies Limited, Block 2 & 3, Magnet Corporate Park, Near Sola Flyover, Thaltej, Ahmedabad – 380 059.
GSTIN of the Appellant	:	24AAECS8719B1ZI
Advance Ruling No. and Date	:	GUJ/GAAR/R/04/2020 dated 17.03.2020
Date of filing appeal	:	30.06.2020
Date of Personal Hearing	:	15.12.2020
Present for the applicant	:	Shri Nitin Shah, Advocate

BRIEF FACTS :-

The appellant M/s. Sterlite Technologies Limited is *inter-alia* engaged in the trading of Information Technology Hardware. The appellant procure requisite Hardware from the vendors (located within India or outside India) on payment of applicable duties/ taxes. Such Hardware are sold as per the requirement of the customer on payment of GST, except in case of export.

2. The appellant has proposed to undertake transaction of supply of hardware in the following manner, which is commercially known as ‘Merchant Trade Transaction’ –

- The appellant will receive an order from the customer located outside India
- Back to back order would be placed by the appellant to a supplier located outside India.
- As per the instruction of the appellant, Vendor (located outside India) will directly ship the goods to the customer (located outside India)
- The Vendor will issue invoice on the appellant against which payment will be made by him in the foreign currency.
- The appellant will raise invoice on the customer and will receive the consideration in foreign currency.

3. The appellant submitted an application before the Gujarat Authority for Advance Ruling (herein after referred to as the 'GAAR'), and raised the following questions for advance ruling :-

- (i) *Whether GST is payable on goods procured from vendor located outside India in a context where the goods so purchased are not brought into India?*
- (ii) *Whether GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises?*

4.1 The GAAR referred to the definition of 'import of goods' given in clause (10) of section 2 of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017'), provisions of section 7 of the IGST Act, 2017, sub-sections (7) and (8) of section 3 of the Customs Tariff Act, 1975, section 12 and 15 of the Customs Act, 1962, Ruling of Kerala Authority for Advance Ruling in the case of M/s. Synthite Industries Ltd. and Circular No. 33/2017-Customs dated 01.08.2017 issued by the Central Board of Excise & Customs (CBEC – now Central Board of Indirect Taxes & Customs – CBIC) and held that GST is not payable on goods procured from vendor located outside India, where the goods so purchased are not brought into India.

4.2 As regards the second query, the GAAR referred to the meaning of 'supply' given in section 7 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and held that as the appellant is selling goods for a consideration in the course or furtherance of business, the transaction tantamount to 'supply' in terms of the definition of 'supply'. The GAAR thereafter examined the provisions of section 7 of the IGST Act, 2017 and observed that in the event that the supplier is located in India and the place of supply is outside India, such supply would be treated as Inter-state supplies. The GAAR also referred to the provisions of section 10 of the IGST Act, 2017 and observed that the goods under consideration are supplied to overseas buyers and as such the place of supply would be a place outside India; that the supplier (appellant) has declared the principal place of business within India and issues the invoices for sale of such goods, therefore the supplier is located in India and the place of supply is outside India and as such the same would be Inter-state supply in terms of the provisions of Section 7(5) of IGST Act, 2017. The GAAR held that therefore the transaction undertaken by the appellant tantamount to supply and is an Inter-state supply. It was further held that the IGST would be leviable unless the goods are exempted or are zero-rated supplies which have been defined as export of goods or services in terms of the provisions of Section 16 of the IGST Act, 2017. It has been further observed by the GAAR that in the instant case, the appellant has not stated the nature of goods and has not declared that such goods are exempted under any notification issued under the powers of Section 11 of the CGST Act, 2017 and the corresponding State Act or Section 6 of the IGST Act, 2017. Thus, the only possibility of goods not subjected to levy of IGST would be the circumstances

where the goods are exported. Thereafter, the GAAR referred to the definition of the term 'export of goods' defined under clause (5) of Section 2 of the IGST Act, 2017 and observed that the said definition indicates that the act of taking goods out of India to a place outside India qualifies as export, whereas, in the present case, the goods have not crossed the Indian customs frontier and as such it is clear that the goods are not physically available in the Indian territory; that when the goods are not available in the Indian territory, the question of taking goods out of India does not arise. The GAAR, therefore held that the subject transaction does not qualify as export of goods. The GAAR, therefore concluded that the transaction is covered under the ambit of Inter-state supply and is neither exempted nor covered under export of services; that as per the theory of elimination, such supplies would be subject to levy of IGST.

4.3 The 'GAAR', vide Advance Ruling No. GUJ/GAAR/R/04/2020 dated 17.03.2020, ruled as follows :-

- (i) *GST is not payable on goods procured from vendor located outside India, where the goods so purchased are not brought into India?*
- (ii) *Applicable GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises.*

5. Aggrieved by the aforesaid ruling, the appellant has filed the present appeal on 30.06.2020. The appellant has referred to Notification No. 35/2020-Central Tax whereby the Government has extended period of limitation arising between 20.03.2020 and 29.06.2020 to 30.06.2020 for filing of appeal etc. under the CGST Act, 2017.

6.1 The appellant has submitted that it had filed the application on 24.05.2018, while the order (ruling) has been pronounced on 17.03.2020, which is after the mandated period of 90 days, therefore, the same should be construed to be unsustainable in law and null and void.

6.2 The appellant has referred to section 1(2) of the IGST Act, 2017, as per which, the said Act extends to the whole of India. The appellant has also referred to section 2(56) of the CGST Act, 2017, defining the term 'India', read with section 2(24) of the IGST Act, 2017, and has submitted that the scope of the IGST Act, 2017 is limited to the territorial jurisdiction to which it extends. It has been submitted that the IGST levy can be introduced only to supplies within the territorial jurisdiction of the IGST Act, 2017; that in case of Merchant Trade Transaction, the supply could be construed to take place outside the territorial jurisdiction of the IGST Act, 2017, hence the levy in the said case, in terms of section 5 read with section 7(5)(a) of the IGST Act, 2017 would mean travelling beyond the jurisdictional powers to levy GST. Therefore, the appellant has contended that the levy of GST on said transaction would be *ultra vires* the IGST Act, 2017. It has been submitted that the learned GAAR's order to treat the said transaction as inter-state supply is travelling beyond the IGST Act, 2017.

6.3 The appellant has further referred to Article 269A of the Constitution of India and has submitted that as per clause (5) thereof, Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or services, or both takes place in the course of inter-state trade or commerce. It has been submitted that as per Explanation to clause (1) of Article 269A of the Constitution of India, import is considered to be transaction 'in the course of inter-state trade or commerce' despite of the fact that only one State is involved in such transaction. Any other transaction, involving only one State, could not be termed as 'inter-state' and for such transaction, the Constitution has not given power to the Government to formulate the principle as contemplated by Article 269A(5). It has been submitted that the provisions of section 7(5)(a) of the IGST Act, 2017 are *ultra vires* the law, since the law has defined a specific transaction to be an inter-state supply without having adequate powers to be so. Alternatively, it has been pleaded that the provisions of section 7(5)(a) of the IGST Act, 2017 be read so as to cover the transaction where the movement of the goods initiates from India, whereby this provision would not include the transaction where the movement of goods initiates from a place outside India and such goods are destined to place outside India.

6.4 The appellant has referred to the provisions of section 8 of the IGST Act, 2017 which *inter-alia* provides that (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit, (ii) goods imported into territory of India till they cross the Customs frontiers of India; or (iii) supplies made to a tourist referred to in section 15 would not be treated as intra-state supply. It has been submitted the administrative and jurisdictional powers in these case would vest with the Central Government and not with the State Government. It has been submitted that section 7(5)(a) of the IGST Act, 2017 should be read only to exclude such transactions from the purview of State Government and said section should not be considered as piece of legislation which is empowering Central Government to travel beyond territorial jurisdiction and levy IGST on all transactions covered therein.

6.5 The appellant has referred to section 16 of the IGST Act, 2017 pertaining to 'zero rated supply' and definition of 'export of goods' given in section 2(5) of the IGST Act, 2017 and submitted that these provisions should not be interpreted to mean that all supplies falling within the purview of section 7(5)(a) of the IGST Act, 2017 but not covered under section 16 of the IGST Act, 2017 would be considered as liable to IGST. It has been submitted that though the term 'export' covers the cases of taking goods out of India, principally, even goods being supplied to customer located in India but delivered at a location which is outside India, should get covered under the purview of term 'export. It has been further submitted that interpreting the term 'export' to only cover supplies where goods are taken out of India would be restrictive and would disregard the principle of consumption based tax, so 'export of goods' should be interpreted in a broader way to cover such cross-border transaction where goods are delivered outside India even if not taken from India. It has been submitted that restricting the concept of export only to cases involving movement from India would mean disregarding the fact that place of supply is outside India. The appellant has submitted that assuming without

accepting that such supplies would not qualify as 'zero rated supply' the same should at least be treated as not liable to GST since the concept of 'export' could be deemed to be covering a case where the goods are consumed / used outside India. It has been submitted that the learned GAAR has strictly interpreted the definition of 'export', without understanding the intention of the law makers' and held that the transaction would be treated as such only when there is movement of goods from India to a place outside India.

6.6 The appellant has submitted that place of supply of service specifically covers case where recipient is located outside India, unlike place of supply of goods. It has been submitted that in case of goods, there is no such provision which states that even where goods are situated / used / consumed outside India and the location of the supplier and the recipient is in India, the place of supply shall be outside India. It has been further submitted that in case of goods, location of supplier and recipient is not relevant and levy would then get linked to location of goods; that in case of transaction in question, since location of goods is outside India, the levy should not arise in India in the absence of specific provision in this regard.

6.7 The appellant has also referred to CBIC Circular No. 33/2017-Customs dated 01.08.2017 and submitted that the said Circular clearly mentions that the tax is leviable only at the time of importation of goods in India and not when the goods are sold while they are in High Seas. Similarly, when the goods are in Norway, i.e. outside India, it can be said that since the goods are outside India, no GST is applicable on the same as the subject on which tax is being levied are never brought in territory of India. The appellant has also referred to CBIC Circular No. 46/2017-Customs dated 24.11.2017 providing that in case the goods are sold while the same are lying in bonded warehouse, the same shall be chargeable to GST.

6.8 The appellant has further submitted that even if the transaction is made taxable in GST, the place of supply in accordance with section 10(1)(a) of the IGST Act, 2017 is outside India and there is no mechanism in the GST returns to report the transaction in GSTR-1 mentioning the place of supply to be a place outside India while levying IGST on the same. In absence of ambiguity around collection mechanism and revenue sharing of such GST, it appears that intention of legislatures was never to levy and collect GST on such type of transaction.

6.9 It is the further submission of the appellant that the transaction was not taxable under erstwhile Indirect Tax Laws and hence, the same should not be liable to GST.

6.10 It has also been submitted that the said transaction is kept outside the purview of United Kingdom VAT legislation.

6.11 The appellant has submitted that Entry 7 has been introduced in Schedule III of the CGST Act, 2017 as follows :-

“Entry 7 : Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.”

It has been submitted that looking at the amendment, it can very well be said that the intention of the law makers was never to tax such out and out sales transactions, where the goods are neither moved into or out of India. The appellant has contended that if the interpretation adopted by the learned GAAR at para 14.3 of the Advance Ruling is considered to be correct, then even after the amendment introduced with effect from 01.02.2019, the present transaction would be construed to be taxable and therefore, the whole purpose of making the amendment for excluding the transaction (Merchant Trade Transaction) not liable to tax is frustrated. It is, therefore, requested that the interpretation adopted by the learned GAAR is required to be discarded and location of supplier in such transactions should be considered as outside India and not within India.

6.12 It has been submitted that the GAAR did not consider the amendment in Schedule III of the CGST Act, 2017 while passing the Advance Ruling. It is therefore requested that the Merchant Trade Transaction held by the GAAR as taxable be held as not liable to tax. Alternatively, it is requested that the transaction be held as not liable to tax from 01.02.2019 i.e. the date of amendment made in Schedule III of the CGST Act, 2017.

6.13 The appellant has relied upon the Advance Rulings in the case of Synthite Industries Ltd. [2018 (12) GSTL 395 (AAR-GST)] given by the Kerala AAR and in the cases of INA Bearing India Private Limited [2019 (20) GSTL 465 (AAR-GST) and Jotun India Private Limited [2018 (19) GSTL 663 (AAR-GST) given by the Maharashtra AAR.

6.14 It has also been submitted that the GAAR has issued Advance Ruling without taking into consideration the additional submission made by the appellant, which is violation of principles of natural justice.

7.1 The appellant, vide letter dated 05.08.2020, made further written submission.

7.2 It has been submitted that as per section 7(5)(a) of the IGST Act, 2017, supply of goods or services or both, when the supplier is located in India and the place of supply is outside India, shall be treated to be supply of goods or services or both in the course of inter-state trade or commerce.

7.3 It has been submitted that in case of supply of goods from one State of India to another State of India, though the condition of supplier being into India will be satisfied, the second condition of place of supply being outside India would not be satisfied since the supply is between two Indian States and therefore it will not get covered by the provisions of Section 7(5)(a). However, it would get covered by the provisions of section 7(1) of the IGST Act, 2017 i.e. the supply between two different States of India would be construed as supply of goods in the course of inter-state trade.

7.4 In case of supply of goods from a country outside India to any State in India, it has been submitted that the condition of supplier being located into India would not be fulfilled, given the fact that the supply is from person based at place outside India. Thus, this scenario would not get covered by section 7(5)(a) of the IGST Act, 2017, however, it would still be treated as an inter-state supply in view of the provisions contained in section 7(2) read with section 2(10) of the IGST Act, 2017. Here, in the context of goods, the transaction would involve movement of goods from foreign country to India i.e. bringing goods into India. The said transaction would be treated as supply in the course of import of goods as defined under section 2(10) of the IGST Act, to mean to bring goods into India from a place outside India.

7.5 In case of supply of goods from a State in India to a Country outside India, it has been submitted that both the conditions stated in section 7(5)(a) of the IGST Act, 2017 are fulfilled and thus this will be treated as an inter-state supply. While the goods would be supplied to recipient located outside India, it becomes pertinent to refer to the definition of 'export of goods' as provided under section 2(5) to mean 'taking goods out of India to a place outside India'. Accordingly, the transaction would qualify as export of goods in the course of inter-state supply.

7.6 As regards the supply from one country outside India to another Country outside India, it has been submitted that the GST Law has not defined 'location of supplier of goods', unlike services. In common parlance, in the context of goods, the location of supplier would be the place from where goods are being moved from. While the place of supply would be the place where the goods are destined to, drawing analogy from section 10 of the IGST Act, 2017. Thus, as the location of the supplier and place of supply would be outside India and as the levy of GST is restricted to Indian territory, the provisions of section 7(5)(a) of the IGST Act, 2017 would not be applicable in the present scenario.

7.7 As regards the applicability of section 7(5)(a) of the IGST Act, 2017 to supply of services, it has been submitted that section 7(5) shall be applicable to goods as well as to services. The said section provides for determining the nature of supply, whether the same would be construed to be in the nature of inter-state supply or intra-state supply, on the basis of the location of supplier and the place of supply of particular transaction. Section 2(15) of the IGST Act, 2017 defines the 'location of supplier of services', unlike the 'location of supplier of goods' which has not been defined. Simultaneously, section 13 of the IGST Act, 2017 deals with the provision around determination of place of supply of services where location of supplier or location of recipient is outside India. Accordingly, for application of section 7(5)(a) of the IGST Act, 2017 to service transactions, first of all, the question around the location of supplier and the place of supply of such service needs to be answered. Hence, the said section would equally be applicable in case of supply of services, with only exception around pre-determination of location of supplier of services, which is not the case for supply of goods. It has also been submitted that section 12 of the IGST Act, 2017 contains provisions for determination of the place of supply of services where location of supplier and recipient of service is in India. However, none of the clause under these sections (section 12 and 13 of the IGST

Act, 2017) provide for scenarios where the location of supplier as well as that of the recipient are outside India. This implies that the reason for not specifically providing for such scenario along with other service supplies is because of the territorial jurisdiction of the IGST Act itself, which cannot travel beyond India.

FINDINGS :

8. We have carefully gone through and considered the submissions made by the appellant in the grounds of appeal, in the further written submission and at the time of personal hearing as well as Advance Ruling given by the GAAR and other materials available on record.

9. The present appeal has been filed on 30.06.2020. The appellant has submitted the date of communication of Advance Ruling No. GUJ/GAAR/R/04/2020 dated 17.03.2020 as 27.05.2020. As per sub-section (2) of section 100 of the CGST Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017'), the applicant aggrieved by the Advance Ruling may file appeal before the Appellate Authority within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicant, which period can be extended by the Appellate Authority by a further period not exceeding thirty days. However, we note that the time limit for filing of appeal under the CGST Act, 2017 has been extended to 31st of August, 2020 vide Notification No. 35/2020-Central Tax dated 03.04.2020, as amended vide Notification No. 55/2020-Central Tax dated 27.06.2020 issued under the provisions of Section 168A of the CGST Act, 2017 inserted vide section 8 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. Therefore, the present appeal has been filed within the prescribed time limit.

10.1 The main issue involved in this case is whether Goods and Services Tax is leviable on the supply of Hardware by the appellant in the manner commercially known as 'Merchant Trade Transaction' (described at para 2 above), wherein the goods are supplied from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

10.2 The Advance Ruling has been issued in this case in respect of two issues. The appellant is not aggrieved with respect to the first issue wherein the GAAR has held that GST is not payable on goods procured from vendor located outside India, where the goods so purchased are not brought into India.

10.3 The present appeal is in respect of the second issue wherein the GAAR has held that applicable GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises. In the present proceedings, we are concerned with this issue only.

11.1 Section 5 of the IGST Act, 2017 reads as follows –

“SECTION 5. Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person :

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962).

(2) to (5)

Thus, as per this charging section, integrated goods and services tax is levied on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.

11.2. Section 7 of the IGST Act, 2017 contains provisions related to ‘inter-state supply’. Sub-section (5) of the said Section 7 reads as follows –

“(5) Supply of goods or services or both, -

- (a) when the supplier is located in India and the place of supply is outside India;
- (b); or
- (c)

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.”

Therefore, in order to determine whether the transaction involved in the present case is an inter-state transaction or otherwise, the location of the supplier and the place of supply are required to be determined.

11.3 As per clause (a) of sub-section (1) of Section 10 of the IGST Act, 2017, ‘where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient’. In the present case, the supply involves movement from the premises of the vendor located outside India to the buyer of the appellant located outside India. Therefore, the place of supply in this case is outside India inasmuch as the movement of goods terminates for delivery at the premises of the buyer located outside India.

11.4 As per clause (24) of section 2 of the IGST Act, 2017, words and expressions used and not defined in this Act (IGST Act, 2017) but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts.

11.5 Section 7 of the CGST Act, 2017 defines the scope of supply. As per clause (a) of sub-section (1) of said section 7, the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

11.6 The term ‘consideration’ has been defined under clause (31) of section 2 of the CGST Act, 2017.

11.7 As per clause (105) of section 2 of CGST Act, 2017, “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. In the present case, the appellant is supplying the goods, therefore, the appellant is the supplier, who and whose principal place of business is located in India.

11.8 The appellant has submitted that the GST Law has not defined ‘location of supplier of goods’, unlike services. It has further been submitted by the appellant that in common parlance, in the context of goods, the location of supplier would be the place from where goods are being moved from. However, we note that as the term “supplier” has been defined in Section 2(105) of the CGST Act, 2017, the natural meaning of the phrase ‘location of supplier’ can be the place where the supplier is located or where the principal place of business of such supplier is located. As such, there is no reason to consider the ‘place from where goods are being moved from’ as the location of supplier, as suggested by the appellant.

11.9 As the supplier is located in India and the place of supply is outside India, the transaction of supply of goods to buyer in case of ‘Merchant Trade Transaction’ would be treated as supply of goods in the course of inter-State trade or commerce. As IGST is levied on all inter-State supplies of goods or services or both, (unless exempted or provided otherwise in any other provision of law) as per Section 5 of the IGST Act, 2017, the supply of goods by the appellant to the buyer located outside India is covered under the ambit of the said provision of the IGST Act, 2017.

12.1 We observe that Paragraph 7 has been inserted in Schedule-III of the CGST Act, 2017 vide section 32 of the Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018), which came into force with effect from 01.02.2019 vide Notification No. 2/2019-Central Tax dated 29.01.2019. The said Paragraph 7 reads as follows :-

“ 7 : Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.”

12.2 It is further observed that as per sub-section (2) of section 7 of the GST Acts, activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services.

12.3 Therefore, as the transactions of the appellant, wherein the goods are supplied from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India, are covered under Paragraph 7 of Schedule III of the GST Acts, it is evident that the said transactions shall be treated neither as a supply of goods nor a supply of services with effect from 01.02.2019. As such, Goods and Services Tax is not leviable on such transactions with effect from 01.02.2019.

12.4 We observe that various provisions of Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018), including section 32 whereby Paragraph 7 has been inserted in Schedule-III of the CGST Act, 2017, have specifically been declared to come into force with effect from 01.02.2019 vide Notification No. 2/2019-Central Tax dated 29.01.2019. Therefore, the Paragraph 7 of Schedule-III of the CGST Act, 2017 cannot be considered to have retrospective effect as the legislative intent is quite clear.

12.5 We, therefore, hold that Integrated Goods and Services Tax was payable during the period from 01.07.2017 to 31.01.2019 on supply of goods directly from the vendor's premises located outside India in the non – taxable territory to the customer's premises located at another place outside India in the non-taxable territory, without such goods entering into India. However, with effect from 01.02.2019, Integrated Goods and Services Tax is not payable on supply of goods directly from the vendor's premises located outside India in the non – taxable territory to the customer's premises located at another place outside India in the non-taxable territory, without such goods entering into India.

13.1 The appellant has referred to section 1(2) of the IGST Act, 2017 and section 2(56) of the CGST Act, 2017 read with section 2(24) of the IGST Act, 2017, and has submitted that the scope of the IGST Act, 2017 is limited to the territorial jurisdiction to which it extends.

13.2 In this regard, we observe that the supplier (appellant) in this case, who was liable to pay the IGST during relevant period, is located in India.

14.1 The appellant has referred to Article 269A and has submitted that section 7(5)(a) of the IGST Act, 2017 is *ultra vires* the law, since the law has defined a specific transaction to be an inter-state supply without having adequate powers to be so.

14.2 In our view, this authority being a creature of statute, cannot go beyond what has been stated in the law. Therefore, it is not within the purview of this authority to examine the *vires* of the law.

15.1 The appellant has submitted that though the term 'export' covers the cases of taking goods out of India, principally, even goods being supplied to customer located in India but delivered at a location which is outside India, should get covered under the purview of term 'export'.

15.2 The expression "export of goods" has been defined under Section 2(5) of the IGST Act, 2017. As per the said definition, "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. The definition of "export of goods" leave no doubt that it covers only those transactions where goods are taken out of India to a place outside India. In the present case, the goods are admittedly not taken out of India and therefore the same do not qualify as "export of goods" in terms of section 2(5) of the IGST Act, 2017. When the statutory provisions are clear, the same cannot be interpreted in a manner to give altogether different meaning to such provisions.

16.1 The CBIC has issued Circular No. 33/2017-Customs dated 01.08.2017 on the subject of levability of IGST on High Sea Sales of imported goods whereas Circular No. 46/2017-Customs dated 24.11.2017 has been issued on the subject of applicability of IGST / GST on goods transferred / sold while being deposited in a warehouse. None of these Circulars pertain to the supply of goods under 'Merchant Trade Transaction' by a supplier located in India. Therefore, these Circulars are not applicable in deciding the present issue.

16.2 When a transaction is leviable to IGST / GST in terms of clear provisions of law, the same cannot be held as not liable to IGST / GST merely on the grounds that such transactions were not taxable under erstwhile Indirect Tax Laws or under the United Kingdom VAT legislation or that there is no mechanism to report place of supply of such transaction in GSTR-1 Return.

16.3 The Advance Rulings in the cases of Synthite Industries Ltd. [2018 (12) GSTL 395 (AAR-GST)], INA Bearing India Private Limited [2019 (20) GSTL 465 (AAR-GST)] and Jotun India Private Limited [2018 (19) GSTL 663 (AAR-GST)] have been issued by considering CBIC Circular No. 33/2017-Customs dated 01.08.2017 and 3/1/2018-IGST dated 25.05.2018. As the various provisions of IGST Act, 2017 and the CGST Act, 2017 discussed hereinabove in detail have not been considered in those Advance Rulings, we are not inclined to follow the said Advance Rulings.

17. In view of the foregoing, the Advance Ruling No. GUJ/GAAR/R/04/2020 dated 17.03.2020 is modified to the extent Advance Ruling dealt with the issue of supply of goods to customer located outside India directly from the vendor's premises located outside India, by holding that the Integrated Goods and Services Tax was payable from 01.07.2017 to 31.01.2019 and is not payable with effect from

01.02.2019 on supply of goods directly from the vendor's premises located outside India in the non – taxable territory to the customer's premises located at another place outside India in the non-taxable territory, without such goods entering into India.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 08.03.2021.