

(AAAR-UP) :(2022) 58 TLC(GST) 090

IN RE M/S. COPERION IDEAL PRIVATE LIMITED

IN THE APPELLATE AUTHORITY FOR ADVANCE RULING, UTTAR PRADESH

SHRI ASHISH VARMA AND SMT. MINISTHY S, MEMBER

04/AAAR/14/10/2022

Dated - 14-10-2022

Under Section 101, 100, 97(2), 7, 7(2)(a)

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act 2017 (here-in-after referred to as the CGST Act and UPSGST Act') by M/s Coperion Ideal Private Limited, Ideal House, A-35, Sector-64, Noida Uttar Pradesh - 201307 (here-in-after referred to as the ' Appellant') against the Advance Ruling Order No UP ADRG - 01/2022 dated 25 04 2022 issued by the Authority for Advance Ruling Uttar Pradesh

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPSGST Act. are the same except for certain provisions Therefore unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provisions under UPSGST Act, 2017 and the vice versa

BRIEF FACTS OF THE CASE

1. M/s Coperion Ideal Private Limited (Appellant), situated at Ideal House A-35 Sector-64, Noida. Uttar Pradesh - 201307, is registered with jurisdictional authorities vide GSTIN-09AACCC3990N1Z4
2. The Appellant is engaged in designing, engineering, fabrication and supply of Pneumatic Conveying System (PCS') and its parts and components PCS is a system which is used for transportation of material through pipes from one location to another using air / gas pressure for moving the goods
3. Depending upon customers requirements, some of the components are manufactured by the Appellant or sourced from other domestic sources and then supplied to customers, while some components are imported from outside India
4. As regards the components imported from outside India, Appellant supplies the imported components to customers in India on **High Sea sale basis under a High Sea Sales contract which is executed while the goods are on high sea i.e. In transit before crossing the customs frontiers of India.** The said supply is carried out by merely transferring the title in goods to the Indian customer while the goods are on High Seas i e., in international waters On arrival of goods at the customs frontiers of India, the Indian Customer who now owns the goods as per document of title, clears the imported goods from customs after payment of applicable import duties, which also includes applicable Integrated Goods and Services Tax('IGST') on value of goods. Appellant raises invoice on customers towards such supply of domestic components as well as for imported components sold on High Sea Sale basis.
5. The appellant does not undertake any erection, commissioning, installation work of the goods supplied by it to the customers, however customers have option to get the supervision of the appellant for such services from third parties which is charged separately
6. GST is levied and payable on supply of goods or services or both made for a consideration in course of furtherance of business. Further, Schedule-III to the CGST Act, enlists various activities which are neither treated as supply of goods nor supply of services under GST. The Central Goods and Service Tax (Amendment) Act, 2018 amended Schedule-III to include within its ambit transaction pertaining to High Sea Sales, so as to treat such sales neither a supply of goods nor a supply of service under GST.
7. In the above background the appellant filed an appeal before the Authority for Advance Ruling on 27.10.2021 on following question.-

"Whether supply of components of Pneumatic Conveying System by the applicant to its customers on High Sea Sales basis will be treated neither as supply of goods nor as supply of service by virtue of entry 8 to the Schedule III of CGST Act?"

8. The Authority for Advance Ruling decided the case vide **Advance Ruling Order No. UP ADRG-01/2022 dated 25.04.2022**, wherein the Authority For Advance Ruling ruled that the question of taxability of supply of goods on High Sea Sales requires determination of 'place of supply' which does not come within the purview of section 97(2) of the CGST Act. The Authority also ruled that **'the question sought by the appellant fell within the domain of Customs' as Circular-33/2017-CUS dated 01.08.2017 clarifies that all taxes, duties etc. on importation of goods are collected under Customs Tariff Act, 1975.**

9. The Authority has held that the said question does not fall within the purview of Section 97(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act') for the reason that **taxability of supply of goods on High Sea Sales is determined on the basis of 'place of supply' which does not come within the purview of section 97(2) of the CGST Act; rather the same fall within the domain of Customs authorities**

GROUND OF APPEAL SUBMITTED BY THE APPELLANT

Being aggrieved by the aforesaid ruling, the Appellant has preferred instant appeal passed by the Authority for Advance Ruling, as the Authority vide its Impugned Ruling has declined to pass any ruling on the question of **'Whether supply of components of Pneumatic Conveying System by the applicant to customers on High Sea Sales basis will be treated neither as supply of goods nor as supply of service by virtue of entry 8 to Schedule III of CGST Act?'**.

The grounds of appeal submitted by the Appellant are as under-

10.1 The question raised by the Appellant in the application for advance ruling falls under the purview of Section 97(2)(e) and (g) of the CGST Act and therefore the Authority had jurisdiction to pass a ruling on the same.

10.2 The Appellant has submitted that it never sought any ruling for determination of **Place of supply of High Sea Sale transactions** instead had expressly stated in the Application that the subject transactions were made on High Sea Sales basis instead a limited question posed by them before the Authority was to seek clarification on the aspect as to whether in terms of the scope of work undertaken by them to their customers, the High Sea Sales transactions would continue to be treated neither as supply of goods nor as supply of services in terms of Entry 8 to Schedule III of the CGST Act.

10.3 The Appellant has submitted that contrary to the question posed by them and the averments made in the Application, the Authority for Advance Ruling declined to pass a ruling on the premise that the issue of taxability of High Sea Sales transaction relates to import of goods **which involves determination of place of supply.**

10.4 The Appellant has submitted that in order to execute a High Sea Sales transaction, they merely required to transfer the title of goods by endorsing the bill of lading and executing the High Sea Sales agreement in favour of the customer (High Sea Sales Buyer) while the goods are in transit i.e., on international waters. As a consequence of the transfer to title, it is the buyer who actually becomes the importer and clears the goods from Customs authorities by filing the bill of entry etc. No question was posed in the Application before the Authority seeking clarification as regards liability of the Customer to pay IGST at the time of Customs clearance of goods sold by Appellant on High Sea Sales basis. As such, there was no occasion for the Authority to enter into Customs domain for examining the implications of IGST under Section 3(7) of the Customs Tariff Act. Hence, the Authority completely misconstrued itself in holding that the issue under consideration falls under the Customs domain and hence outside the purview of Section 97(2) of the CGST Act.

10.5 The Appellant submits that the Authority misdirected itself and assumed as if it was required to determine place of supply and further assumed as if the transaction of High Sea Sales fell in the Customs domain. Obviously, the said findings of the Authority are perverse and not tenable.

10.6 The Appellant has submitted that in terms of Section 97 of the CGST Act, an application to obtain advance ruling can be sought by a desirous applicant stating the question on which the advance ruling is to be sought. Section 97(2) of the CGST Act enumerates aspects on which an advance ruling can be sought by any applicant vide the Impugned Ruling, the **Authority has held that the question sought to be answered by the Appellant requires determination of 'place of supply' which does not find a place under Section 97(2) of the CGST Act.**

10.7 The Appellant has submitted that their question as to whether transactions of High Sea Sales would amount to supply of goods or services under GST or will it be treated as neither a supply of goods nor a supply of service under GST is squarely covered by clause (e) and (g) to Section 97(2) of the CGST Act and the Authority materially erred in declining to pass a ruling on the basis of reasoning that the question sought by the Appellant is out of the purview of Section 97(2) of the CGST Act.

10.8 The Appellant has submitted that **Supply of imported components of PCS on High Sea Sale basis is neither a supply of goods nor a supply of service under GST.** High Sea Sales is a concept which has been prevalent in the erstwhile indirect tax regime as well. By nature, **'High Seas' mean 'international waters' over which no country can exercise its jurisdiction or sovereignty.** High Sea Sales simply mean sales which are carried out when the goods which are being transported by a vessel are on the high seas at the time of sale. In the case of High Sea Sales, the original importer merely transfers the title and ownership of the goods to his buyer for an agreed consideration, and such buyer of the original importer subsequently clears the goods through customs by paying applicable import duties and taxes **(copy of contract entered with M/s Technimont and purchase orders pursuant thereto attached)**

10.9 The Appellant has submitted, that it was a settled position that no sales tax was payable on the sales effected on High Sea Sales. Under the GST regime, Section 7 of the CGST Act defines the term 'supply' in an inclusive manner to inter alia include all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business. Further, Section 7(2)(a) of the CGST

Act refers to Schedule III of the CGST Act which enlists certain activities or transactions that are not to be treated as either supply of goods or supply of services for the purposes of GST law.

10.10 Pertinently, the Central Goods and Services Tax (Amendment) Act, 2018 inserted two new entries under the said Schedule III. The extract of the relevant entry is reproduced below:

"8(a)

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have dispatched from the port of origin located outside India but before clearance for home consumption.

10.11 The Appellant submits that referring to the concept of High Sea Sale explained herein above, in terms of the contract with its customers, they are obligated to sell imported components on High Sea Sale basis while such components are on high seas (over international waters) i.e., in transit before crossing the customs frontiers of India and before their clearance for home consumption and thus it is evident that the activity of sale of PCS components on High Sea Sale them is nothing but supply of goods by the appellant to its buyers, by endorsement of documents of title to goods when the goods are in transit and thus is **squarely covered by Clause (b) of Entry 8 to Schedule III according to which, such supply shall neither be treated as a supply of goods nor a supply of services.**

10.12 The Appellant refers to Ruling given by the **Authority for Advance Ruling, Telangana in the case of M/S. AIE Fiber Resource and Trading (India) Private Limited [2021 (12) TMI 1265]**, wherein the Authority considered the question of taxability of imported goods supplied to customers on High Sea Sale basis. The Authority have ruled that imported goods supplied on High Sea Sales are squarely covered by clause (b) to Entry 8 to Schedule III inserted vide CGST (Amendment) Act, 2018 w.e.f. 01.02.2019 and hence no IGST is payable on such transaction by the Applicant therein.

10.13 The Appellant has referred to the CBIC Circular 33/2017 dated 01 08 2017 which clarifies that IGST on imports shall only be leviable at the time of importation by the last buyer in the chain, and not before that. Thus, even the GST Council and CBIC clarified the position in relation to taxability of High Sea Sales only in the hands of the ultimate buyer who files the bill of entry for clearance of goods and not in the hands of the original importer or any other intermediary seller and accordingly the imported components of PCS sold by the Appellant to customers on High Sea Sale basis while such components are on high seas i e, in transit before crossing the customs frontiers of India and before their clearance for home consumption, would not be considered as either supply of goods or supply of services as per Entry 8(b) of Schedule III to CGST Act, and accordingly will be outside the purview of GST.

10.14 The Appellant was granted personal hearing on 28.09.2022 Shri Dharendra Kumar Rana. Advocate appeared on behalf of the appellant and reiterated the submission already made by them vide their reply dated 15 07 2022 He insisted that there was no supply of services at the time of high sea sales and there is no commission whatsoever involved therein Some clarification were asked from the appellant and the appellant sought one week time to make additional submissions The Appellant submitted following documents along with additional submission as under-

(i) copy of Trade Notice No 145/2002 dated 03 12 2002 issued by the Commissioner (CUS) Mumbai vide F No S/26345/2002A(G)

(ii) AR Com/07/2019 TSAAR Order No 30/2021 passed by the Authority for Advance Ruling Telangana in the case of M/s AIE FIBER RESOURCE AND TRADING (INDIA) PRIVATE LIMITED

(iii) RELEASE NOTES- regarding inspection conducted at foreign suppliers site-M/s Technip Energies

10.15 Customers float tender for supply of PCS After the contract is awarded to the Appellant, customers issue separate purchase orders for offshore and onshore supplies In each purchase order, the scope of supply, terms of supply and respective contract prices are duly stipulated On the onshore supply portion, Appellant duly discharges applicable GST Further, if any additional services are procured by the customer in terms of the onshore supply purchase order, then the same are separately charged by the Appellant and applicable GST is paid on the same.

10.16 Inspection, testing, drawings, technical documents etc. are integral to the supply of components for pellet transfer systems. Prior to the dispatch of goods to India, in case the site (NAYARA Energy Ltd. Refinery at Vadinar, Gujarat) is not ready, the customer (Technip) has to inform the Appellant so that the dispatch of goods so ordered to India under the offshore supply purchase order can be deferred up to 30 days, an eventuality, the foreign supplier retains the goods at his premises outside India without any extra charge for the same by treating the same to be integral part of the supply of components for pellet transfer systems.

10.17 It is clarified that the offshore purchase order issued by the customer is for supply of components for pellet transfer systems. The value is also agreed for supply of components for pellet transfer systems. Inspection, testing, certification, drawings, technical documents and pre-dispatch storage (if required by customer) are all integral to the supply of components for pellet transfer systems. Neither any of these activities have independent existence nor can they alter the characterization of supply of components for pellet transfer systems.

10.18 Inspection, testing, control and acceptance test etc. are all done outside India at the site of foreign supplier on whom Appellant places back-to-back purchase orders in terms of offshore supply purchase order of customer. A representative of customer remains also present at the site of foreign supplier during such inspection, testing, control and acceptance test.(Copy of Clearance Notes dated 14.02.2022 and 16.03.2022 attached).

10.19 It is further clarified that after dispatch of goods by the foreign supplier, only High Sea Sale agreement is executed by the Appellant and its customers and Appellant transfers title in the goods by endorsing the bill of lading in favour of its customers. No service whatsoever is provided by Appellant to the customers in respect of the supply of components for pellet transfer systems on High Sea Sale basis.

Discussion and findings

11.1 We have gone through the facts of the matter as submitted by the Appellant, the submissions made by the Appellant during personal hearing and other evidence on record. We find that as per the scope of work submitted by the Appellant they are engaged in designing, engineering, fabrication and supply of Pneumatic Conveying System ('PCS') and its parts and components. PCS is a system which is used for transportation of material through pipes from one location to another using air / gas pressure for moving the goods. Depending upon customers' requirements, some of the components are manufactured by the Appellant or sourced from other domestic sources and then supplied to customers, while some components are imported from outside India.

11.2 As regards the components imported from outside India, Appellant supplies the imported components to customers in India claimed to be on **High Sea Sale basis** under a High Sea Sales contract which is executed while the goods are on high seas i.e., in transit before crossing the customs frontiers of India. The said supply is carried out by merely transferring the title in goods to the Indian customer while the goods are on High Seas i.e., in international waters. On arrival of goods at the customs frontiers of India the Indian customer who now owns the goods as per document of title, clears the imported goods from customs after payment of applicable import duties, which also includes applicable Integrated Goods and Services Tax('IGST') on value of goods. Appellant raises invoice on customers towards such supply of domestic components as well as for imported components sold on High Sea Sale basis.

11.3 We find that the question posed by the Appellant before the Authority for Advance Ruling is as to "Whether supply of components of Pneumatic Conveying System by the applicant to its customers on High Sea Sales basis will be treated neither as supply of goods nor as supply of service by virtue of entry 8 to the Schedule III of CGST Act? and the Authority has ruled that import as well as High Sea Sales is determined on the basis of place of supply; that the 'Place of supply' is not covered by Section 97(2) of the CGST Act, 2017 at all and hence is outside the purview of Authority for Advance Ruling.

11.4 We find that High Sea Sales has not been defined in CGST Act, 2017; however Central Goods and Services Tax (Amendment) Act, 2018 has inserted two new entries under the said Schedule III. The extract of the relevant entry is reproduced below:

"8. (a)

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have dispatched from the port of origin located outside India but before clearance for home consumption."

Further, Section 2 (28) of the Customs Act, 1962 defines "Indian customs waters" as the waters extending into the sea up to the limit of contiguous zone of India under Section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976).

11.5 From the above it may be interpreted that 'High Sea Sales' is a sale through endorsement of title to the goods, after the goods have dispatched from the port of origin located outside India before crossing the customs frontiers of India and before their clearance for home consumption. High Sea Sales are carried out when the goods which are being transported by a vessel are on the high seas at the time of sale and the original importer merely transfers the title and ownership of the goods to his buyer for an agreed consideration, and such buyer of the original importer subsequently clears the goods through customs by paying applicable import duties and taxes.

11.6 We find that from the Scope of Work and other documents such as purchase orders, copy of contracts etc. submitted by the Appellant that they have entered into an agreement with their customers on high sea sale basis for supply of PCS on High Sea Sale Basis to their customers.

11.7 Now the question arises as to whether ruling asked by the Appellant is covered under the mandate of Authority for Advance Ruling as provided under Section 97(2) of CGST Act, 2017.

For the sake of convenience, the relevant extract of Section 97(2) of the act is reproduced hereunder-

"(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-

(a) Classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

(emphasis added)

11.8 We find that essentially what the Appellant has sought to attain clarity upon is that whether the transaction undertaken by the appellant is a supply under GST or not so that taxability of the same, if any, can be determined. In this perspective, we find that question sought by the Appellant before the Authority for Advance Ruling falls within the purview of Section 97(2) of the Central Goods and Service Tax Act, 2017 under clause (e) and (g) as mentioned above. Accordingly, we hold that the Authority for Advance Ruling has erred in denying the ruling sought by the Appellant on the ground that import as well High Sea Sales is determined on the basis of place of supply which is not covered by Section 97(2) of the CGST Act, 2017 at all and outside the purview of Authority for Advance Ruling.

11.9 Now we take up the issue as to **"Whether supply of components of Pneumatic Conveying System by the appellant to its customers on High sea sales basis will be treated neither as supply of goods nor as supply of service by virtue of entry 8 to the Schedule III of CGST Act."**

11.9.1 On the basis of the description in the tender document and contract being executed by the appellant With its customer, the overall scope of work under Such contracts appear to include goods as also services, including post-import services and optional services that are integral part of the SUPPLY.

For instance, in Order No 7500100976 Date 27-Dec-2021 Project BIN4266 on Page 268 as Annexure-8 Copy of off-shore purchase order from M/S Tecnimont dated 18 01 2022 it is specifically mentioned that

(M) OPTIONAL ITEMS

The following options may be released by the BUYER within the dates herein specified without any cost impact on the agreed Unit and/or Total Prices. Parties agree and acknowledge that these options are an integral, ancillary part of the SUPPLY

In the event BUYER does not avail himself of the right to order VENDOR all the above items or part of them, VENDOR cannot claim to BUYER, because of this reason, any compensation and reimbursement of costs or damages of whatsoever nature. In case of no specific conditions are indicated, the same conditions of this PURCHASE ORDER are intended to be valid.

M. 1) FIELD SERVICES

VENDOR assures the presence at SITE of its qualified and skillful personnel and/or personnel of its SUB-VENDOR(s) for supervision and assistance during erection, pre-commissioning, commissioning, start-up and test run to the PLANT, at soonest but in any case not later than fifteen (15) calendar days upon BUYER's written request at the conditions stated in the CONDITIONS FOR VENDOR FIELD SERVICES" hereto attached at the daily rates stated in Annex 9 and conditions agreed below

Also, for example, as seen from Annexure-5 to appellants submissions -CONTRACT: #201794C001" EPC-02 Package Polypropylene Unit associated off sites & Utilities, Supply, as at paras 2.1 and 2.2 on pages 182 and 183, also includes:-

'2.1 Supply

It will include in particular:

- a. The design, engineering, fabrication and supply of Pellet Transfer system Package as per Attachment
- b. The drawings and all technical documents listed in the requisition including SUPPLIER mechanical catalogue and manufacturing inspection dossier, if applicable.
- c. Inspection and Testing as required in the corresponding Requisition & agreed ITP
- d. Control and acceptance tests usually and contractually requested in the requisition as well as those requested by the applicable codes and standards. Supplier shall provide Certificate of Conformance for the material supplied.

l. Delivery of materials shall be on Ex-Works Noida / Greater Noida / Sub-Vendor Works including Packing & Forwarding (Including Saddles for safe transportation) as per latest edition of incoterms. m. The necessary insurance policies i.e. Fire Insurance & Peril Policy for Assets including Inventory, Group Accident Policy & Workman Compensation Policy.

n. In case, site is not ready, Vendor agrees for 30 days free storage at vendor's works after inspection. Beyond 30 days, storage charges shall be discussed and mutually agreed.

o. KOM should be planned within 30 days on receipt of Order.

2.2 Additional services

2.2.1 Supervision

Upon the CONTRACTOR's request, the SUPPLIER will furnish the specialist(s) for:

Supervision at site during erection and/or pre-commissioning and/or commissioning and start-up as defined in Cl. No. 3.2.1. GST shall be extra as applicable.

2.2.2 Other Services - Training at Site/Sub-Vendor's Place-

a) Vendor shall provide Training to NAYARA Specialist at Site and at Coperion works as and when requested by Contractor/Client as defined in cl. No. 3.2.2.

Similarly, in Contract Code 8003-PA-MCR-130184 under Contract No 666720 at para 4.1.3 at page 53 it is explicitly specified that:

The Vendor shall provide the following services with relevant documentation

Participation to KOM

Participation to P&ID review and 3D Model reviews.

Participation to HAZOP/SIL review.

Participation to coordination meetings after order.

Participation to control system FAT , participation in iFAT with logistics for PLC (daily rates),

Inspection and testing of the supply, as per applicable ITPs

Final Painting of the complete supply in workshop,

Preparation for long term preservation, shipment, storage 12 months storage

Packing of the complete supply. '

In addition to this, in para 6 2 of Contract no 66-6720 (page no 55) under the head 'Service', the vender is required to provide the following services.

'Service

The package shall be designed and constructed so that the plant can operate continuously for three years between major maintenance that lead to shutdown the package.

The equipment shutdowns and their duration shall be kept to an absolute minimum. VENDOR shall give full details of any operations that may require the machines to be shut down. VENDOR shall state the need, the frequency and the duration of all scheduled shutdowns.'

As seen from a few sample instances above, it appears that a number of activities are being under taken by the appellatant which involve supply of goods as well as supply of services (including post-import and after-sale services including optional services which are integral part of supply).

11.10 GST council has deliberated the levy of IGST on high sea sales in the case of imported goods. IGST on such high sea sale(s) transactions of imported goods. whether one or multiple Shall be levied and collected only at the time of Importation, when the import declarations are filed before the Customs authorities for customs clearance for the first time Value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at of clearance The provisions related to it have been incorporated in sub-section (12) of Section 3 of the Customs Tariff Act 1975

11.11 Transactions pertaining to services supplied outside the territory of India (e.g Ocean Freight on imports when FOB) are also considered supply services and is taxable

11.12 In Circular No 33/2017-Cus dated 1-8-2017 issued from F.No. 450/131/2017-Cus IV it is mentioned that 'The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice high seas sales contract. **details of service charges/commission paid** etc. to establish a link between the first contracted price of the goods and the last transaction.' (emphasis added) Also in CBIC Circular No 32/2004-Cus dated 11-5-2004 issued from F No. 467/08/2004 Cus V the quantum of high-sea-sales service charges was in question In the same Circular reference made that **Hon'ble Supreme Court, in the case of M/s Hyderabad Industries Limited [2000 (115) E L.T 593 (SC)]** have also upheld that the service charges/high-seas-sales-commission (actuals) are includable in the CIF value of imported goods

(emphasis added) Thereafter as a part of explanation it is explained that the 'importer would be required to furnish the entire chain of documents, such as Original Invoice high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first international transfer of goods to the last transaction "

Hence some services and commission being Ingrained In high-seas sale transactions appear to be a distinct possibility in cases of high-sea sales transactions.

11.13 However, during personal hearing held on 28 09.2022 and in Exhibit-2 submitted by them at para C to C.3 and from D to D.3 the appellant has mentioned that no element of service is there in their high-seas sale transactions and there is no commission etc either in the same. Some excerpts pertaining to service element in their Exhibit-2 are reproduced hereunder:

"D.9 It is further clarified that after dispatch of goods by the foreign supplier, only High Sea Sale agreement is executed by the Appellant and its customers and Appellant transfers title in the goods by endorsing the bill of lading in favour of its customers. No service whatsoever is provided by Appellant to the customers in respect of the supply of components for pellet transfer systems on High Sea Sale basis. This is further evident from Clause 2.2 of the offshore purchase order (refer page 139 of Appeal) where against 'Additional Services' it is mentioned as 'NA', which means that there are no services which needs to be provided in respect of the High Sea Sale goods by Appellant to customer in addition to the supply of components of pellet transfer systems.

D.10 The above submissions further find support from the 'Price' in Clause 3 of the offshore purchase order (page 139 - 140 of the Appeal). In clause 3.1, it is clearly mentioned that the total price would be EURO 18,57,573 whose break-up in Attachment 1 (at page 153 - 154 of the Appeal) clearly shows that the entire price is attributed for supply of components of pellet transfer systems and all other elements of the supply are included in the price for supply of components of pellet transfer systems.

D.11 In view of the above submissions, it is absolutely beyond doubt that the scope of supply involved in High Sea Sale transactions between Appellant and customers involves only supply of goods and there is no supply of services."

12 We find that Section 7 of the CGST Act defines the term 'supply' in an inclusive manner to inter alia include all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business. Further, Section 7(2)(a) of the CGST Act refers to Schedule III of the CGST Act which specifies certain activities or transaction that shall be treated neither as supply of goods nor a supply of services for the purposes of CST law. we also find that central Goods and Services Tax (Amendment) Act, 2018 inserted two new entries under the said Schedule III. The extract of the relevant entry is reproduced below:

"8. (a).....

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have dispatched from the port of origin located outside India but before clearance for home consumption."

From a plain reading of entry no. 8 (b) to Schedule III as inserted by Central Goods and Service Tax (Amendment) Act, 2018 with effect from 01.02.2019 it is clear that, only supply of "goods" by the consignee by way of endorsement of documents of title to the goods during their sale on high sea sales basis for delivery in India, is covered therein. However, the supply of "services" is not covered in entry no. 8 (b) to Schedule III of CGST Act, 2017, as amended.

13 Accordingly, we rule as under-

Ruling:

1. We set aside the impugned ruling **UP ADRG - 01/2022 dated 25.04.2022** passed by the Authority for Advance Ruling against the Appellant as the question sought to be answered is squarely covered u/s 97(2) of the CGST ACT.

2. We hold that supply of imported goods i.e components needed for Pneumatic Conveying System made by the appellant to its customers on High Sea Sales basis will not be treated as supply of "goods" by virtue of entry 8(b) to the Schedule III of CGST Act, 2017 as amended, with effect from 01.02.2019. However, the supply of "services" in relation thereto, if any, will fall under the purview of "supply" as defined under Section 7 of the CGST Act.

14 The Ruling given herein above applies to the unique facts and circumstances of the appellants' matter in appeal and is based upon the submissions and evidences made available in this regard.

15 This ruling is valid only within the jurisdiction of Authority for Advance Ruling, Uttar Pradesh in terms of the provisions of The Central Goods and Services Tax act, 2017 and Uttar Pradesh Goods and Services Tax Act, 2017.