KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SMT. RANJANA JHA, MEMBER

SMT. SHIKHA C, MEMBER

ORDER NO.KAR/AAAR/02/2022 **DATE: 04.03.2022**

Sl. No	Name and address of the appellant	M/s Time Technoplast Ltd, Plot No 605, Part A, Belur, KIADB, 3rd stage, Belur, Dharwad 580011
1	GSTIN or User ID	29AAACT2783J1ZY
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 54/2021 Dated: 29th October 2021
3	Date of filing appeal	07-12-2021
4	Represented by	Shri. G. Elango, Advocate
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Belagavi Commissionerate.
6	Jurisdictional Authority- State	LGSTO 310, Dharwad
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs 20,000 /- paid vide Challan CIN No IBKL21122900001802 dated 01-12-2021.

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Time Technoplast Ltd, Plot No 605, Part A, Belur, KIADB, 3rd stage, Belur, Dharwad 580011 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 54/2021 dated 29th October 2021.

Brief Facts of the case:

3. The Appellant is engaged in the manufacture of packaging material including HDPE Drums, Jerrycans and Intermediate Bulk Containers falling under HSN 3923. The goods are supplied to customers who are exporters holding IEC number and registered with the Export Promotion Council. The above types of packaging material are billed to the merchant exporter (who is their customer) but shipped, on the instructions of their customer, to the premises of the chemical manufacturer, who manufacturers ethyl alcohol and packs the same in the said HDPE drums. The merchant exporter then exports the ethyl alcohol packed in the HDPE drums within the stipulated time.

4. The Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

> *"Whether they are liable for 0.1% concessional rate of tax under Notification No 41/2017-IT (Rate) on supply of HDPE Drums for use by the manufacturer of Ethyl Alcohol in his factory for packing his manufactured goods and supply to merchant exporter?"*

5. The AAR passed advance ruling order No KAR ADRG 54/2021 dated 29-10-2021 and held as follows:

> *"The applicant is not entitled for 0.1% concessional rate of tax (GST) under Notification No 41/2017-IT (Rate) on supply of HDPE Drums for use by the manufacturer of Ethyl Alcohol in his factory for packaging his manufactured goods and supply to merchant exporter."*

6. Aggrieved by the above ruling given by the AAR, the Appellant has filed this appeal on the following grounds.

6.1. Out of all the conditions laid down in Notf No 41/2017 – IT (Rate), only the first condition is applicable to the supplier and all the other conditions are to be complied with by

the recipient. The only ground on which the exemption could be denied to the supplier is when the goods are not exported by the recipient within a period of ninety days; that for failure to fulfil any of the other conditions which are qua recipient, the burden of differential tax shall lie on the recipient and not on the supplier. Therefore, the ruling that the Appellant is not eligible for exemption on the ground that the recipient does not fulfil.

6.2. The Appellant submitted that the AAR has failed to appreciate the conditions in the Notification in proper perspective keeping in view the overall objective of the Notification, thereby adopting a narrow interpretation of the condition that the recipient has to move the goods 'directly' to the port, etc or to a warehouse; that the first condition in the Notification states that the registered supplier shall 'supply' the goods to the registered recipient; that the term supply has been given a wide scope in terms of Section 7 of the CGST Act; that Section 10 of the IGST Act recognizes inter alia, supply of goods without movement of goods, supply of goods with movement of goods by the supplier or recipient, supply of goods to a third party on the directions of the recipient, etc; that in the present case, the goods (drums) have been supplied to the recipient exporter but delivered to the registered premises of the manufacturer of chemicals in terms of clause (b) of Section 10(1) of the IGST Act. A strict and narrow interpretation of the condition that the recipient shall move the goods directly from the place of registered supplier" to the port, etc or to a registered warehouse, would preclude the supplies covered by clause (b) of Section 10 and restrict the exemption only to cases where the movement of goods is caused by the recipient in terms of clause (a) of Section 10(1); that such an interpretation restricting the scope of the notification to certain supplies only, does not flow from the overall applicability of the Notification.

6.3. The Appellant submitted that a strict interpretation would render the Notification No 41/2017 IT (Rate) otiose and dysfunctional; that condition (vi) of the Notification states that "the registered recipient shall move the said goods from place of registered supplier"; that Section 10(1)(a) of the IGST Act provides that 'where the supply involves movement of goods, 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'; that as per the interpretation provided by the AAR, the supplier has to deliver the goods at his premises and the recipient has to move the goods to the port, etc or to a warehouse; that accordingly, the place of supply of the subject goods will be the premises of the supplier; that the location of

the supplier and the place of supply being the same State, the supply would be constructed as an 'intra state supply' in terms of Section 8 of the IGST Act and hence only CGST/SGST would apply; that the necessity of exemption IGST in excess of 0.1% would never arise and hence there was no requirement of an IGST Rate Notification.

6.4. The Appellant submitted that in the overall scheme of the Notification, what is required to be seen is whether the recipient has received the goods and has exported the same, within a period of 90 days and it has been properly demonstrated that the said goods only have been exported; that all these have been fulfilled in the present transaction. They submitted that the drums are delivered to the manufacturer-supplier of chemicals only for the purpose of filing the chemicals and, from the premises of the chemical supplier the drums with the chemicals are cleared by the recipient exporter directly to the Port, etc and exported; that in the process, the drums do not undergo any change and are clearly identifiable; that the recipient also mentions the GSTIN of the Appellant, the invoice number under which the drums were supplied in the Shipping Bill as required in the Notification; that it is clearly established that the drums supplied by the Appellant are actually exported and the same is evidenced through documents.

6.5. The Appellant submitted that GST aw recognizes the concept of deemed receipt of goods; that Section 16(2) of the CGST Act provides that the registered person is deemed to have received the goods where the goods are delivered by the supplier to a recipient or any other person on the directions of such registered person. Thus, it is clear that the goods (drums) supplied by the Appellant have been received by the recipient exporter when the same have been delivered to the registered premises of the chemical manufacturer. They further submitted that supply of drums to the premises of chemical manufacturer is a commercial necessity; that the recipient exporter cannot receive the drums from the Appellant and the chemicals from another supplier and 'aggregate' them in a warehouse; that by nature, the chemicals could only be transported by packing in the drums and therefore, unless the drums are delivered at the premises of the chemical manufacturer / supplier, the recipient exporter would not be able to 'receive' the chemicals and export the same; that the same practice of billing the exporter and shipping the drums/barrels to the chemical manufacturer is widely prevalent in the industry and in various parts of the country; therefore to insist that the recipient exporter should receive the drums from the Appellant in a warehouse and

chemicals from another supplier in the warehouse and aggregate both before movement to port, etc for exports is not a viable proposition in such cases. They submitted that even though the drums can be received by the recipient in a warehouse, it is not possible to receive the chemicals without the container; therefore, the only viable option is to get the drums delivered at the chemical manufacturer's premises and to move the chemicals filled in the drums for export; that in such a scenario, it can be construed that the recipient exporter has aggregated the goods (chemical and drum) in the premises of the chemical manufacturer, which incidentally is a registered premises under GST. They submitted that therefore, the rationale behind condition No (vii) is substantially met, though the said premises is not registered as a warehouse by the recipient exporter.

6.6. The Appellant further submitted that neither the GST law nor the Notification defines a 'registered warehouse'; that the scope of the term 'warehouse' used in the Notification cannot be inferred from definition of 'place of business' under Section 2(85) of the Act, which includes a 'warehouse' in as much as the condition (vii) requires acknowledgement from the 'warehouse operator' which term is also not explained in the law or the Notification. Therefore, condition (viii) and consequently condition (vii) are conditions incapable of performance; that the ruling that the Appellant is not eligible for the exemption for non-fulfillment of the conditions 'incapable of performance' is not tenable in law. They submitted that in the case of exemption notifications which deals with beneficial exemptions, the beneficial purpose must be given effect to. In this regard, the relied on the decision of the Supreme Court in the case of Mother Superior Adoration Convent (2021-TIOL-156-Supreme Court) wherein after referring to various authorities on the question of exemption, the Apex court has inter alia observed that a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accordance with such object. And on the assumption that any ambiguity arises in such construction such ambiguity must be in favour if that which is exempted."

6.7. They submitted that the basic objective of the subject Notification is to encourage exports and to remove bottlenecks in the form of blockage of working capital to exporters on account of taxes; that the Notification along with Notification No 48/2017 Central Tax deeming supplies to EOUs / Advance Authorisation / EPCG license holders as 'deemed

exports' and Customs Notification No 78 & 79/2017 Cus exempting imports from IGST were issued consequent to recommendations of the Committee on Exports deliberated upon in the 22nd GST Council Meeting; that the Committee itself was formed after a presentation of the Chief Economic Adviser to Government of India during the 21st GST Council meeting wherein upfront payment of taxes by exporters which were exempted before GST levy was cited as factors causing embedded taxes on exports.

6.8. They submitted that if the exemption is denied, they will be forced to charge full tax (18%) on the recipient exporter who will avail the same as ITC; the chemical supplier will be eligible for concessional rate of tax on the supply of chemicals to the merchant exporter. However, the merchant exporter will not be able to export the goods on payment of tax as they will be hit by the restriction under Rule 96(10); they will be forced to export under LUT and claim refund of the unutilized ITC under Rule 89 which entails passage of time and burden of working capital costs. They submitted that denial of exemption to the Appellant on hyper technical grounds would thus defeat the objective of the Notification and hence the ruling of the AAR requires to be reversed since the substantial conditions of the Notification are fulfilled by the recipient exporter.

PERSONAL HEARING

7. The appellant was granted a virtual hearing on 27th January 2022 but the same was adjourned to 14th February 2022 on the request of the Appellant. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Shri. G. Elango, Advocate.

7.1. The Advocate explained the facts of the case and the circumstances leading to the present appeal. He submitted that the Appellant manufactures HDPE drums which are supplied to the merchant exporter on a 'bill to ship to' model; that the drums are delivered to the premises of the chemical manufacturer on the advice of the merchant exporter; that the drums are filled with the chemical at the premises of the chemical manufacturer and are sent directly to the port for export. He emphasised that the nature of the goods exported is such that the chemicals have to be packed in the drums; that the drums and the chemical has been aggregated in the premises of the chemical manufacturer.

7.2. The Advocate submitted that the benefit of the Notf No 41/2017 IT-(Rate) cannot be granted to only a particular class of suppliers who are able to supply the goods directly to the port for export and denied to those suppliers whose nature of goods is such that it has to be moved to another premises for aggregation before export. They stressed on the fact that all other conditions of the Notification were fulfilled and hence, the benefit of the concessional rate should not be denied to them. He submitted that the drums which are sent to the chemical manufacturer's premises do not undergo any change and they are identifiable as such at the time of export and the shipping bill also carries the HSN code of the drums as well as the HSN code of the chemical.

7.3. On being pointed out by the Member that condition No (vi) of the Notf No 41/2017 IT (Rate) uses the term "directly" which implies that the goods should be moved from the place of the supplier directly to the port or registered warehouse from where the goods are exported and that the activity carried out at the premises of the chemical manufacturer is not a simple aggregation, he submitted that in their case, the premises of the chemical manufacturer should be deemed to be the registered warehouse where the drums and the chemical is being aggregated and sent out directly to the port for export. On being asked how they satisfy the condition of moving the goods to a registered warehouse, he explained that the term "registered warehouse" is not defined under GST law; that the merchant exporter is aggregating the goods (drums and chemical) at the premises of the chemical manufacturer which is deemed to be the registered warehouse. They relied on the Supreme Court decision in the case of Mother Superior Adoration Convent (2021 (376) ELT 242 SC) to substantiate their claim that in a beneficial notification, one must adopt the interpretation keeping in mind the object which sought to be achieved. In this case, it is the Government's object of encouraging exports which has to be kept in mind and to that end the substantial compliance to the conditions of the notifications should entitle them to supply the goods at the concessional rate. They also relied on the Supreme Court decision in the case of C.Ex Shillong vs North Eastern Tobacco (2002 (146) ELT 490 where in the case of an area based exemption, the Apex Court had held that small procedural lapses should not come in the way of granting the exemption. In view of the above decisions, he submitted that a lenient view should be adopted rather than a hyper technical view of the subject conditions so as to enable them to get the benefit of the Notf No 41/2017 IT (Rate).

7.4. The Advocate prayed that the ruling of the lower Authority be set aside and they be granted the benefit of concessional rate of tax under Notf No 41/2017 IT (Rate). They agreed to give a written summary of the submissions made during the personal hearing.

7.5. The Appellant in his additional submissions made on 17th February 2022 submitted that the registered merchant exporters are buying Ethyl Alcohol (liquid form) from sugar factories and export the same after packing in drums supplied by the Appellant; that since the ethyl alcohol is in liquid form, it cannot be transported without putting it in plastic drums. Therefore, the registered exporter aggregates the drums purchased from Appellant and Ethyl Alcohol (liquid form) purchased from sugar factories in the registered warehouse of sugar factory (duly permitted by Excise Dept); that after this aggregation, the goods (Ethyl alcohol packed in plastic drums) are moved to the Port under the permission of Excise Department and exported. Copy of the Export Pass No DYS 112021/208 dated 23-06-2021 duly signed by Inspector State Excise and the Collector of the District has been submitted.

7.6. They submitted that the premises of the sugar factory which is registered under GST law is construed as a 'registered warehouse' as they enter into an agreement and get necessary approval from Excise Department and thus supply satisfies the condition No (vii) in the Notification; that the Sugar industry distillery division permits the Merchant Exporter to move the goods i.e Alloted quantity of packed ethyl alcohol from their premises after completing all State Excise & Central Excise formalities. Copy of sample letter dated 03-05-2021 issued by M/s Kumbhi-Kasari Sahakari Sakhar Karkhana Ltd (Chemical manufacturer) to M/s Jepsons Commodities Pvt Ltd (Merchant Exporter) has been submitted; that point No 3 of the above said letter clearly indicates that all State excise and Central excise formalities are to be completed by the Merchant Exporter; that the merchant exporter aggregates the supplies of drums and ethyl alcohol in the bonded warehouse located in the sugar factory and move the goods directly to the port after completion of all export formalities and thereby fully complying with the condition No (vii) of the subject Notification.

7.7. They further submitted that Notification No 41/2017 IT (Rate) is a beneficial notification in order to encourage exports without blocking working capital and hence the same has to be interpreted liberally and objectively. They also submitted that many other plastic drum manufacturing companies are supplying plastic drums to merchant exporters and deliver drums to sugar factories by availing the concessional rate of tax and that to the best of their knowledge, all of them are following the same procedure i.e aggregating the goods in

sugar factory and moving the plastic drums packed with Ethyl alcohol directly to the port. Hence, denial of concessional rate to the Appellant would badly affect their business. They contended that where substantial conditions of the Notification are satisfied, the benefit of the notification should be allowed by interpreting liberally and objectively. They placed reliance on the decision of the Supreme Court in the following cases:

a) Government of Kerala vs Mother Superior Adoration Convent 2021 (376) ELT 242 (SC)

b) Mangalore Chemicals & Fertilizers Ltd vs Deputy Commissioner – 1991 (55) ELT 437 (SC)

c) Commissioner of Customs (Preventive), Amritsar vs Malwa Industries Ltd – 2—9 (235) ELT 214 (SC)

d) Commissioner of C. Ex, Shillong vs North Eastern Tobacco Ltd – 2002 (146) ELT 490 (SC)

7.8. In view of the aforesaid, they urged that even if there is any procedural defect, the benefit of the notification should not be denied to them in as much as all the substantial conditions of the notification are satisfied.

DISCUSSIONS AND FINDINGS

8. We have gone through the entire case records and considered the submissions made by the Appellant in their grounds of appeal, as well as the oral and written submissions made at the time of personal hearing.

9. The short point for determination is whether the Appellant is eligible for the benefit of concessional rate of GST at 0.1% in terms of Notification No 41/2017 IT (Rate) dated 23-10-2017, in respect of the supplies made to the merchant exporter under the bill-to ship-to model. The lower Authority has denied the benefit of the said Notification on the grounds that the Appellant does not fulfil the condition No (vi) of the said Notification since the goods have not moved directly from the Appellant's premises to the port or to a registered warehouse for export. The Appellant is aggrieved by this ruling and has appealed on the grounds that the commodity exported by the merchant exporter is Ethyl alcohol which is purchased from sugar factories and the same can be moved by the sugar factory

only on packing in the HDPE drums supplied by them; that on the instructions of the merchant exporter, they have billed the drums to the merchant exporter and shipped the same to the premises of the sugar factory from where the Ethyl alcohol packed in HDPE drums will leave directly to the port for export. They argued that the premises of the sugar factory is to be construed as the "registered warehouse" where the goods get aggregated by the merchant exporter and hence they satisfy the condition No (vii) of the impugned Notification; that having complied with all other conditions of the Notification, they should not be denied the benefit.

10. In the GST regime, the government has provided special relief to the merchant exporters by way of reducing the GST rate for purchasing goods from domestic suppliers for export. Accordingly, Notification Nos 40/2017 Central Tax (Rate) and 41/2017 Integrated Tax (Rate) both dated 23-10-2017 stipulates that intra-state/inter-state supplies of taxable goods by a registered supplier to a merchant exporter shall be chargeable to GST at 0.05% (in the case of intra-state supplies) and 0.1% (in the case of inter-state supplies) subject to the fulfilment of the following conditions:

i) The goods are supplied by a registered supplier on a tax invoice

ii) The goods are exported by the registered recipient (merchant exporter) within a period of 90 days from the date of issue of the tax invoice by the registered supplier.

(iii) the merchant exporter shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in the Shipping Bill or Bill of export

(iv) The merchant exporter shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce.

(v) The purchase order for supply of goods at concessional rate shall be provided to the jurisdictional tax officer of the registered supplier.

(vi) The merchant exporter shall move the goods from the place of the registered supplier –

(a) directly to the Port, ICD, Airport or Land Customs Station from where the goods are to be exported; or

(b) directly to a registered warehouse from where the said goods shall move to the Port, ICD, Airport or Land Customs Station from where the goods are to be exported.

(vii) If the merchant exporter intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the merchant exporter shall move the goods to the Port, ICD, Airport or Land Customs Station from where they shall be exported.

(viii) In the case of a situation referred in condition (vii), the merchant exporter shall endorse receipt of goods on the tax invoice and also obtain acknowledgment of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier;

(ix) When the goods have been exported, the merchant exporter shall provide a copy of the Shipping Bill or bill of export containing details of the GSTIN and tax invoice number of the registered supplier, along with proof of having filed the export general manifest or export report, to the registered supplier as well as jurisdictional tax officer of such supplier.

11. In the instant case, we find from the records that there is no dispute with regard to the fulfilment of conditions (i) to (v) and condition (ix) of the Notification by the Appellant who is the registered supplier and the merchant exporter who is the registered recipient. However, we are concerned with the fulfilment of condition (vi). Clause (a) of condition (vi) of the impugned Notification mandates that the goods shall be moved from the place of the registered supplier directly to the port from where the goods are to be exported. If this is not possible, then clause (b) of condition (vi) mandates that the goods shall be moved from the supplier's premises directly to a registered warehouse from where the goods will move to the port from where the goods are to be exported. In this case, the HDPE drums are not moved directly from the Appellant's premises (who is the supplier) to the port for export. The Appellant is operating on a bill-to ship-to model on the directions of the recipient merchant

exporter whereby, the invoice for the supply of drums is raised on the merchant exporter but the drums are shipped to the premises of a sugar factory where they are used for packing the Ethyl alcohol and the Ethyl alcohol so packed at the sugar factory is sent to the port for export by the merchant exporter. Clearly the provisions of clause (a) of condition (vi) are not fulfilled.

12. As regards satisfying clause (b) of condition (vi), the Appellant has contended that the premises of the sugar factory where the drums have been shipped to, is to be considered as a 'registered warehouse'. The word 'warehouse' has not been defined in GST. A common understanding of the term 'warehouse' is a place where goods are stored prior to their distribution for sale. A warehouse is a place of business which takes custody of the goods deposited by the depositor and issues an acknowledgment for receipt and storage of the goods. It is basically a place for storage of goods. Even under the Customs Act, 1962, a warehouse is defined as a public or private premise licenced by the Customs to store duty paid imported goods. A warehouse is recognised as a place of business in GST law in terms of Section 2(85) of the CGST Act and 'storage and warehousing service' is classified as a taxable service under GST. The goods stored in a warehouse usually do not belong to the warehouse owner or operator. As per Section 35(2) of the CGST Act, every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is registered or not, shall maintain records of the consignor, consignee and other relevant details of the goods in such manner as may be prescribed. The Appellant's contention is that the sugar factory where the drums are shipped to, is deemed to be considered as a 'warehouse'. We are unable to appreciate this argument. A factory is a place where goods are manufactured. A "factory of production" and a "warehouse" are separate premises whose purpose of business is distinctly different from one another and cannot be fictionally merged into one. The goods stored in the sugar factory belong only to the said factory. It cannot be said that the sugar factory is providing warehousing facility for storage of HDPE drums. The drums are used in the packing of Ethyl alcohol and it is for this specific purpose that the drums have been brought into the sugar factory. We do not agree with the argument that the movement of the drums to the premises of the sugar factory is akin to the goods being moved to a warehouse. We therefore hold that the Appellant has failed to satisfy clause (b) of condition (vi) of the Notification 41/2017 IT (Rate).

13. The Appellant has attempted to make out a case that they satisfy condition (vii) of the impugned Notification. We find that condition (vii) applies to a situation where the merchant exporter intends to aggregate supplies from multiple suppliers. In such an event, the goods from each supplier is moved to the warehouse and after aggregation, the merchant exporter moves the goods to the port for export. It is the submission of the Appellant that the merchant exporter has aggregated the drums purchased from them and the Ethyl alcohol purchased from the sugar factory in the premises of the sugar factory, which is deemed to be the warehouse, and after this aggregation, the goods (ethyl alcohol packed in drums) are moved to the port for export. We have already held that the sugar factory cannot be considered as the 'registered warehouse' and hence the question of determining whether condition (vii) is fulfilled or not does not arise. Be that as it may, we find that the Appellant has misconstrued the term "aggregation" used in condition (vii) of the impugned Notification. The term 'aggregation' used in the Notification is a method adopted for effective supply chain management and increasing cost effectiveness. Aggregating supplies from multiple suppliers helps a company synchronise its supply with demand and thereby reduce logistics costs. A merchant exporter who intends to aggregate supplies in a warehouse, is required to comply with condition (viii) of the impugned Notification whereby, he has to provide an endorsed tax invoice and the acknowledgment issued by the warehouse operator for having received the goods, to the supplier as well as the jurisdictional officer of such supplier. In this case, the merchant export is not aggregating the drums and ethyl alcohol at the sugar factory. The merchant exporter is exporting Ethyl alcohol which is a product packed in drums. The drums are a raw material inventory for the supply of Ethyl Alcohol. For the purpose of packing, the merchant exporter has instructed the Appellant to move the drums to the sugar factory. This cannot in any manner be termed as aggregating of supplies by the merchant exporter. This argument of the Appellant therefore, does not find favour with us. In any case, we have already held that that movement of the drums to the premises of the sugar factory is not a movement to a registered warehouse and hence does not satisfy clause (b) of condition (vi) of the impugned Notification.

14. The Appellant has also made a plea that since the substantial conditions of the impugned Notification have been satisfied, they should be allowed the benefit by adopting a liberal interpretation. They have also relied on several Supreme Court decisions in this regard. The case of Govt of Kerala vs Mother Superior Adoration Convent relied upon by them, pertains to an exemption provision contained in the Kerala Building Tax Act, 1975

whereby, under Section 3(1)(b) of the said Act, buildings that are used principally for religious, charitable or educational purposes or as factories or workshops are exempted from building tax. The State claimed that no exemption should be granted as residential accommodation for nuns and hostels for students would be for residential as apart from religious or educational purposes and would not therefore be covered by the exemption contained in Section 3(1)(b) of the Act. In this background, the Supreme Court while dismissing the appeals against the State of Kerala held that in the case of beneficial exemptions, a literal formalistic interpretation of the statute at hand is to be eschewed; that the statute is to be construed in accordance with the object sought to be achieved. Similarly, in the Supreme Court decisions in the cases of Mangalore Chemicals & Fertilizers Ltd, Malwa Industries Ltd and North Eastern Tobacco Ltd, which have been relied upon by the Appellant, the common factor is concerning the interpretation of exemption notifications. The case before us is not about an exemption Notification but rather a beneficial notification extending concessional rate of tax subject to fulfillment of certain conditions.

15. It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein. The basic rule in interpretation of any statutory provision is that the plain words of the statute must be given effect to. It is only in the case of ambiguity that the principle of strict/liberal interpretation would arise. In this case, there is no ambiguity in the wordings of the impugned Notification. The conditions required to be complied with by the registered supplier and the registered recipient are very clear and does not give any scope for interpretation. The Supreme Court in the case of Commissioner of Central Excise, Chandigarh I vs Maahan Diaries reported in 2004 (166) ELT 23 (SC) has observed that it is settled law that in order to claim benefit of a Notification a party must strictly comply with the terms of the Notification. If on wordings of the Notification the benefit is not available then by stretching the words of the Notification or by adding words to the Notification, benefit cannot be conferred. Applying the ratio of this decision to the case before us, we find that there is no necessity of stretching the meaning of 'warehouse' referred to in the impugned Notification, to include a factory premises. One must not lose sight of the fact that this Notification was introduced only to provide relief to merchant exporters under the GST regime. The merchant exporters have the option to avail the benefit of this concessional rate and export the goods under LuT and later claim refund of the concessional rate of tax paid on their procurements. However, they can choose to export the goods on payment of IGST in which case, they will not be

eligible to avail the benefit of concessional rate of tax under this Notification on their procurements. The CBIC vide Circular No 125/44/2019 GST dated 18-11-2019 has also clarified that the benefit of supplies at concessional rate if tax in terms of Notification No 40/2017 Central Tax (Rate) and Notification No 41/2017 Integrated Tax (Rate) is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and/or recipient and the goods may be procured at the normal applicable rate of tax. Therefore, we agree with the ruling passed by the lower Authority that the Appellant is not eligible for the benefit of the concessional rate of tax in terms of Notification No 41/2017 IT (Rate) dated 23-10-2017 in as much as they have not complied with the conditions of the Notification.

16. In view of the foregoing, we pass the following order.

ORDER

We uphold the order No. KAR ADRG 54/2021 dated 29/10/2021 passed by the Advance Ruling Authority and the appeal filed by the Appellant M/s. Time Technoplast Ltd, stands dismissed on all accounts.

(RANJANA JHA)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

(SHIKHA C.)
Member
Karnataka Appellate Authority
for Advance Ruling

Member
Appellate Authority for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Belagavi Commissionerate
4. The Assistant Commissioner, LGSTO-310, Dharwad
5. Office folder

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE