


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/34
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/42)

Date :02.11.2021.

Name and address of the Appellant	:	M/s. SPX Flow Technology India Pvt. Ltd., Survey No. 275/A, Odhav Road, Ahmedabad – 382 415.
GSTIN of the Appellant	:	24AAACS7234B1ZU
Advance Ruling No. and Date	:	GUJ/GAAR/R/102/2020 dated 14.10.2020
Date of filing appeal	:	01.12.2020
Date of Personal Hearing	:	20.07.2021
Present for the applicant	:	Shri Amal. P. Dave, Advocate

BRIEF FACTS :-

The appellant M/s. SPX Flow Technology (India) Pvt. Ltd. is engaged in manufacture of Single and Multi Stage Pumps designed for handling water, Dairy Machine etc. and also carries out trading of such goods.

2. In respect of trading in foreign countries, the appellant has submitted that the trading business is undertaken in the following manner.

- (i) The appellant's parent company M/s. SPX Flow Technology, located in Poland (herein after referred to as 'M/s. SPX Poland'), ships goods such as spare parts of Dairy Machinery, to recipient customer company, BRAC Dairy and Food Project located in Bangladesh (herein after referred to as 'M/s. BRAC, Bangladesh'). The transaction involves generation of one invoice by M/s. SPX, Poland to the appellant and generation of another invoice by the appellant on the recipient company located in Bangladesh.
- (ii) The recipient customer company receives such Dairy Machinery and its spare parts directly from M/s. SPX, Poland. In other words, the goods are directly delivered from Poland to the customer located at Dhaka, on CIF basis. While undertaking this transaction, the invoices are generated parallel to each other, whereby M/s. SPX, Poland raises a set of invoices to appellant (M/s. SPX Flow

Technology (India) Pvt. Ltd., India) and at the same time, the appellant company raises another set of invoice to M/s. BRAC, Bangladesh.

- (iii) A Purchase Order is received by the appellant from the customer of Bangladesh specifying therein their requirement in terms of components, parts etc. and quantity required.
- (iv) After receiving such order, the appellant would place its purchase order to the Polish supplier i.e. M/s. SPX, Poland, specifying therein details of the goods required, quantity of such goods etc. The details like name and address of the appellant's customer at Bangladesh are also notified to the Polish supplier while placing the Purchase Order.
- (v) Thereupon, the Polish supplier would dispatch the goods directly to the appellant's customer of Bangladesh and documents for transportation of the goods directly from Poland to Bangladesh are also prepared and issued by M/s. SPX Poland.
- (vi) A VAT invoice is issued by M/s. SPX, Poland to the appellant and the appellant has to make payment of the price of the goods so invoiced by the Polish supplier and such payment is actually made also by the appellant to M/s. SPX, Poland by following the normal banking channel.
- (vii) The appellant would issue its commercial invoice to the customer at Bangladesh, and the customer makes payment of the price of the goods so invoiced to the appellant directly.

3. In respect of the aforesaid trading business, 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 the activity undertaken by the applicant is covered by Entry No. 7 in Schedule 3 of the CGST Act, 2017?

(ii) Whether the applicant is liable to pay IGST on out and out transactions taking place beyond the Customs frontiers of India?

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 5 and 7 of the IGST Act, 2017, sub-sections (7), (8) and (12) of section 3 of the Customs Tariff Act, 1975, sections 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 where Bill of Entry / Import Declarations are not being filed with respect to the goods procured, GST would not be leviable.

4.2 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’, which also includes reference to similar provisions contained in the Gujarat Goods and Services Tax Act, 2017, referred to as the ‘GGST Act, 2017’) and held that the appellant, who is the third party in the transaction involved in the instant case, is acting as an agent on behalf of the supplier i.e. M/s. SPX Poland and is therefore covered under the definition of ‘supplier’ as mentioned in Section 2(105) of the CGST Act, 2017. It has further been held that as the appellant, who is the supplier in the instant case, is selling goods for a consideration in the course or furtherance of business and such 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 also observed that entries 7 and 8 have been inserted w.e.f. 01.02.2019 in Schedule – III of the CGST Act, 2017 (which covers activities or transactions treated neither as a supply of goods nor a supply of services), vide the Central Goods and Services Tax (Amendment) Act, 2018 read with Notification No. 2/2019-Central Tax dated 29.01.2019. Entry 7 of the said Schedule – III covers “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”. The GAAR further observed that the supply of goods in the instant case takes place from Poland, which is a non-taxable territory, to Bangladesh, which also is non-taxable territory, without the said goods entering into India, the transactions are covered by said Entry 7 of Schedule – III. The GAAR, therefore held that no GST is leviable on such type of transactions which have taken place with effect from 01.02.2019 and onwards.

4.4 The ‘GAAR’, vide Advance Ruling No. GUJ/GAAR/R/102/2020 dated 14.10.2020, ruled as follows :-

- (i) *The activity undertaken by the applicant M/s. SPX Flow Technology (India) Pvt. Ltd., Ahmedabad is covered under Entry No. 7 in Schedule 3 of the CGST Act, 2017 in respect of the transactions undertaken for the period from 01.02.2019 onwards for the reasons discussed hereinabove.*
- (ii) *Applicable IGST 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 (located outside India) for such transactions effected upto 31.01.2019. However, no IGST is payable on such transactions effected from 01.02.2019 onwards, for the reasons discussed hereinabove.*

5. Aggrieved by the aforesaid ruling to the extent it has been held that the appellant is liable to pay IGST on the transactions which are undertaken before 01.02.2019, the appellant has filed the present appeal. The appeal is limited to the question as to whether the appellant was liable to pay IGST before 01.02.2019 on the out and out transactions undertaken by it.

6.1 The appellant has submitted that the GAAR has considered the definition of supplier under section 2(105) of the CGST Act, 2017 and has held that since the appellant is an agent, therefore, the appellant is covered under the definition of supplier. It has been submitted that the GAAR has failed to consider the definition of the term agent as provided under Section 2(5) of the CGST Act, 2017. It has been submitted that in the present case, the appellant is raising its own invoice on the foreign recipient and M/s. SPX, Poland is raising an invoice on the appellant, therefore, the appellant cannot be said to be carrying out supply of goods on behalf of another person as an agent. Further, the goods are sold by raising an invoice by the appellant on its own account for the supply of goods, wherein the physical movement of the goods is being undertaken from Poland to Bangladesh and

therefore, there is no business of supply or receipt of goods in terms of the definition. It is submitted that when the appellant is not an agent of M/s. SPX Poland, then the appellant cannot be the supplier of the goods inasmuch as for there to be supplier, there has to be a physical movement of goods from one person to another person. The appellant has submitted that when it does not fall within the category of agent as mentioned in Section 2(5) of the CGST Act, 2017, then this finding of the authority becomes totally void inasmuch as the only reason for the appellant to be supplier was considered on the ground that the appellant is an agent of the foreign supplier.

6.2 The appellant has submitted that the findings of the authority on the basis that the supplier was located in India and place of supply was outside India is also erroneous inasmuch as when the appellant is not a supplier of the goods within the meaning of the statute then the appellant cannot be held liable to pay IGST for the supply of these goods.

6.3 The appellant has also submitted that the reference to section 10 of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act, 2017") by the GAAR is also not proper as the said section is not applicable in the present case; that the said section would be applicable only when the supply is carried out in between the parties who are in India. The appellant has placed reliance on the decision in case of M/s. Enmarol Petroleum [2019 (20) GSTL 442].

6.4 As regards section 7(5) of the IGST Act, 2017, the appellant has submitted that just because a transaction is in the course of inter-state trade or commerce, such transaction cannot by itself become taxable. It has been submitted that if it is considered that there are no goods within India, then there can be no movement of such goods so as to consider it as supply of goods exigible to tax.

6.5 The appellant has submitted that when the goods are not within the Indian territory, then there can be no application of the IGST Act or CGST Act inasmuch as both these statutes are applicable only to the taxable territory of India and not beyond that. They relied upon the judgement of the Hon'ble Supreme Court in the case of M/s. GVK Industries.

6.6 The appellant has further submitted that the insertion of Entry No. 7 to Schedule – III (of the CGST Act, 2017) is explanatory by nature and hence should be adopted for the prior period also. It has been submitted that the legislature has now explicitly declared that such transactions are not taxable and accordingly, the legal position that was implicit is now made explicit.

6.7 The appellant has requested to modify the aforesaid advance ruling of the GAAR to the extent it holds that the appellant is liable to pay IGST prior to 01.02.2019.

7.1 In the additional written submission, the appellant reiterated that the entire activity being undertaken in the present case is beyond the territorial waters of India and is an extra territorial event for which no tax can be levied under the IGST Act inasmuch as the GST laws are only applicable to India by virtue of Section 1 of the CGST Act, 2017 and Section 1 of the IGST Act, 2017.

7.2 The appellant has placed reliance on the judgement of the Hon'ble High Court of Gujarat in the case of Mohit Minerals Pvt. Ltd. [2020 (33) GSTL 321], wherein the issue involved was related to Entry No. 10 of Notification No. 10/2017-Integrated Tax (Rate) where under supply of service of transportation of goods by a person in a non taxable territory to a person in a non taxable territory from a place outside India, was sought to be taxed. The appellant has submitted that the Hon'ble High Court came to a conclusion that such activity being undertaken from the non taxable territory to another non taxable territory, beyond the customs frontiers, is an activity which is extra territorial in nature, and therefore, the IGST Act cannot be made applicable to such events, which are beyond territory of India. The appellant has also relied on the judgement of the Hon'ble High Court of Gujarat in the case of M/s. SAL Steel Ltd. [2020 (37) GSTL 3].

7.3 It has been submitted that in the present case, the GAAR has accepted that the supply of goods was being undertaken from a place in the non taxable territory to another place in the non taxable territory, without the goods entering into India. If that is so, then the decisions of the Hon'ble Gujarat High Court are squarely applicable in the present case and since it is undisputed that the supply of goods has been undertaken from the non taxable territory to another non taxable territory, then even before 29.01.2019 (*sic*), such activities are not taxable under the IGST Act, inasmuch as they are extra territorial activities and the IGST Act, 2017 cannot be applied to events which are being undertaken beyond the territory of 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.

9.1 The main issue involved in this case is whether trading in foreign countries by the appellant (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, is leviable to Goods and Services Tax prior to 01.02.2019.

9.2 The Advance Ruling has been issued in this case by the GAAR holding that the activity undertaken by the appellant is covered under Entry No. 7 of Schedule-III of the CGST Act, 2017 in respect of the transactions undertaken for the period from 01.02.2019 onwards and applicable IGST 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 (located outside India) for such transactions effected upto 31.01.2019, however, no IGST is payable on such transactions effected from 01.02.2019 onwards. The appellant is aggrieved with the advance ruling of the GAAR to the extent it held that the appellant was liable to pay IGST prior to 01.02.2019.

10.1 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. Furthermore, IGST on the supply of petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel shall be levied from the date to be notified.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

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

10.7 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, whose principal place of business is located in India.

10.8 It is the submission of the appellant that merely because a transaction is in the course of inter-state trade or commerce, such transaction cannot by itself become taxable in terms of section 7(5) of the IGST Act, 2017. It has been submitted by the appellant that if there are no goods within India, then there can be no movement of such goods so as to consider it as supply of goods exigible to tax. In this regard, we observe that IGST is levied under Section 5 of the IGST Act, 2017 on all inter-State supplies of goods or services or both (except on the supply of alcoholic liquor for human consumption, some petroleum products mentioned in sub-section (2) of Section 5 of the IGST Act, 2017 on which IGST shall be levied from the date to be notified). The said section 5 does not provide any

exclusion from levy of IGST to goods, which are not within India, as has been contended by the appellant.

10.9 As the supplier (appellant) is located in India and the place of supply is outside India, the transaction of supply of goods to buyer in case of 'trading in foreign countries' 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.

11.1 The appellant has submitted that the insertion of Entry 7 to Schedule-III of the CGST Act, 2017 is explanatory by nature and hence it should be adopted for the prior period also.

11.2 We observe that Entry 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.”

11.3 It is further observed that as per sub-section (2) of section 7 of the CGST Act, 2017 activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services.

11.4 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 Entry 7 of Schedule III of the CGST Act, 2017, 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.

11.5 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.

11.6 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 (M/s. SPX Poland) located outside India in the non – taxable territory to the customer's premises (M/s. BRAC, Bangladesh) located at another place outside India in the non-taxable territory, without such goods entering into India.

12.1 The appellant has submitted that the IGST Act and the CGST Act are applicable only to the taxable territory of India. It has further submitted that when the goods are not within the Indian territory, then there can be no application of these statutes. The appellant has also relied upon the judgement of the Hon'ble Supreme Court in the case of M/s. GVK Industries and judgements of the Hon'ble High Court of Gujarat in the cases of M/s. Mohit Minerals Pvt. Ltd. and M/s. SAL Steel Ltd.

12.2 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.

12.3 In the case of Mohit Minerals Pvt. Ltd., the issue involved was relating to levy of IGST on transportation service of imported goods on reverse charge basis on importer. In this context, the Hon'ble High Court of Gujarat has held that the importer could be said to have neither availed the services of transportation of goods in a vessel nor he was liable to pay the consideration of such service, hence the writ applicant therein was not the 'recipient' of the transportation of goods in a vessel service as per Section 2(93) of the CGST Act. Further, in that case the service of transportation of goods was being supplied by the person (shipping line) from a non taxable territory to a person (foreign exporter) in a non taxable territory, from a place outside India up to the customs station of clearance in India. The case of M/s. SAL Steel Ltd. involves similar facts, though it pertains to Service Tax matter. The fact situation in the present case is totally different than those in case of M/s. Mohit Minerals Pvt. Ltd. and M/s. SAL Steel Ltd. In the present case, the supplier (appellant herein) is located in India who is supplying the goods to the buyer located in non-taxable territory. Therefore, the said judgements are not applicable in the facts of the present case.

13.1 The appellant has contended that section 10 of the IGST Act, 2017 would be applicable only when the supply is carried out in between the parties who are in India.

13.2 In this regard, it is observed that section 10 of the IGST Act, 2017 is applicable for determining place of supply of goods, other than supply of goods imported into, or exported from India. Thus, the plain reading of section 10 of the IGST Act, 2017 does not support the contention of the appellant.

14. The Advance Ruling in the case of Enmarol Petroleum India Pvt. Ltd. [2019 (20) G.S.T.L. 442 (A.A.R.-GST) has been issued, *inter-alia*, by considering CBIC Circular No. 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 that Advance Rulings, we are not inclined to follow the said Advance Ruling.

15. In view of the foregoing, the Advance Ruling No. GUJ/GAAR/R/102/2020 dated 14.10.2020 is confirmed to the extent it has been appeal against, by holding that the Integrated Goods and Services Tax was payable by the appellant M/s. SPX Flow Technology (India) Pvt. Ltd. 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.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date :02.11.2021